Civil Code of the PRC — Book II: Property Rights

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 2

Chapter I — General Provisions 2

Chapter II — Creation, Alteration, Transfer, and Extinguishment of Real Rights 2

Chapter III — Protection of Real Rights 4

Chapter IV — General Provisions on Ownership 5

Chapter V — State Ownership, Collective Ownership, and Private Ownership 6

Chapter VI — Owners' Condominium Rights in Buildings 8

Chapter VII — Neighboring Relations 9

Chapter VIII — Co-ownership 10

Chapter IX — Special Provisions on the Acquisition of Ownership 11

Chapter X — Usufruct Rights — General Provisions 13

Chapter XI — Right to Land Contractual Management 13

Chapter XII — Right to Use Land for Construction 14

Chapter XIII — Right to Use Residential Land 16

Chapter XIV — Right of Habitation 16

Chapter XV — Easements 16

Chapter XVI — Security Interests — General Provisions 18

Chapter XVII — Mortgage 18

Chapter XVIII — Pledge 22

Chapter XIX — Lien 24

Chapter XX — Possession 25

Table of Contents

- Chapter I — General Provisions
- Chapter II — Creation, Alteration, Transfer, and Extinguishment of Real Rights
- Chapter III — Protection of Real Rights
- Chapter IV — General Provisions on Ownership
- Chapter V — State Ownership, Collective Ownership, and Private Ownership
- Chapter VI — Owners' Condominium Rights in Buildings
- Chapter VII — Neighboring Relations
- Chapter VIII — Co-ownership
- Chapter IX — Special Provisions on the Acquisition of Ownership
- Chapter X — Usufruct Rights — General Provisions
- Chapter XI — Right to Land Contractual Management
- Chapter XII — Right to Use Land for Construction
- Chapter XIII — Right to Use Residential Land
- Chapter XIV — Right of Habitation
- Chapter XV — Easements
- Chapter XVI — Security Interests — General Provisions
- Chapter XVII — Mortgage
- Chapter XVIII — Pledge
- Chapter XIX — Lien
- Chapter XX — Possession

Chapter I — General Provisions

Article 205 — This Book regulates the civil relations arising from the attribution and use of property.

Article 206 — The state upholds and improves the basic socialist economic systems, such as the system under which public ownership plays the dominant role and diverse forms of ownership develop side by side, the system under which distribution according to work plays the dominant role while multiple forms of distribution coexist, and the socialist market economy system. The state consolidates and develops the public sector of the economy and encourages, supports, and guides the development of the non-public sector of the economy. The state implements the socialist market economy and guarantees the equal legal status and development rights of all market participants.

Article 207 — The real rights of the state, collectives, private individuals, and other right holders shall be equally protected by law and shall not be infringed upon by any organization or individual.

Article 208 — The creation, alteration, transfer, and extinguishment of real rights in immovable property shall be registered in accordance with the provisions of law. Movable property shall be delivered in accordance with the provisions of law.

Chapter II — Creation, Alteration, Transfer, and Extinguishment of Real Rights

Article 209 — The creation, alteration, transfer, and extinguishment of real rights in immovable property shall become effective upon registration in accordance with the law; no real right shall be created, altered, transferred, or extinguished without registration, unless otherwise provided by law. The ownership of natural resources that are owned by the state in accordance with the law may not be registered.

Article 210 — The registration of immovable property shall be handled by the registration authority at the place where the immovable property is located. The state shall implement a unified registration system for immovable property. The scope of the unified registration, the registration authorities, and the registration procedures shall be prescribed by laws and administrative regulations.

Article 211 — When applying for registration of immovable property, the applicant shall, in light of the different registration matters, provide the certificate of ownership of the immovable property and the necessary materials such as the location and area of the immovable property.

Article 212 — The registration authority shall perform the following duties: (1) verify the certificate of ownership and other necessary materials provided by the applicant; (2) inquire the applicant about the relevant registration matters; (3) register the relevant matters truthfully and in a timely manner; and (4) other duties prescribed by laws and administrative regulations. Where further proof is required for the relevant particulars of the immovable property to be registered, the registration authority may conduct on-site inspection of the immovable property.

Article 213 — The registration authority shall not commit any of the following acts: (1) demanding an appraisal of the immovable property; (2) conducting repeated registration in the name of annual inspection or the like; or (3) other acts exceeding the scope of its duties in registration.

Article 214 — The creation, alteration, transfer, and extinguishment of real rights in immovable property shall take effect from the time of registration in the register of immovable property if registration is required by law; if registration is not required, they shall take effect from the time of the conclusion of the contract or other acts, unless otherwise provided by law.

Article 215 — A contract concluded by the parties concerning the creation, alteration, transfer, or extinguishment of real rights in immovable property shall become effective upon the conclusion of the contract, unless otherwise provided by law or otherwise agreed upon by the parties; the validity of the contract shall not be affected by the fact that the real right has not been registered.

Article 216 — The register of immovable property shall be the basis for the attribution and content of real rights. The register of immovable property shall be maintained by the registration authority.

Article 217 — The certificate of ownership of immovable property shall be proof of the right holder’s entitlement to the real right in the immovable property. The matters recorded in the certificate of ownership of immovable property shall be consistent with those recorded in the register of immovable property; in case of inconsistency, the register of immovable property shall prevail, unless there is evidence to prove that the register of immovable property is erroneous.

Article 218 — A right holder or an interested party may apply to inquire about and copy the information recorded in the register of immovable property, and the registration authority shall provide such information.

Article 219 — An interested party shall not disclose or illegally use the registered information of a right holder that it has obtained.

Article 220 — Where a right holder or an interested party believes that a matter recorded in the register of immovable property is erroneous, it may apply for correction of the registration. Where the right holder recorded in the register of immovable property agrees in writing to the correction or there is evidence to prove that the registration is indeed erroneous, the registration authority shall make the correction. Where the right holder recorded in the register of immovable property disagrees with the correction, an interested party may apply for registration of a demurrer. Where the registration authority registers a demurrer but the applicant fails to institute an action within 15 days from the date of registration of the demurrer, the demurrer shall cease to be effective. Where the registration of a demurrer is improper and causes damage to the right holder, the right holder may request the applicant to compensate for the damage.

Article 221 — Where the parties enter into an agreement for the sale and purchase of a house or other real rights in immovable property, they may apply to the registration authority for registration of a priority notice in order to ensure the realization of the real right in the future. Where no application for registration of the real right in the immovable property is filed within 90 days from the date of registration of the priority notice, or the real right is extinguished after the registration of the priority notice, the priority notice shall cease to be effective. After the registration of a priority notice, any disposal of the immovable property without the consent of the right holder recorded in the priority notice shall not have the effect of a real right.

Article 222 — Where a party provides false materials for registration and causes damage to another person, it shall be liable for compensation. Where the registration authority causes damage to another person due to an error in registration, it shall be liable for compensation. After making compensation, the registration authority may seek recovery from the person who caused the registration error.

Article 223 — The fees for the registration of immovable property shall be charged on a piece-rate basis and shall not be charged in proportion to the area or size of the immovable property or the value of the immovable property. The specific rates of the fees shall be prescribed by the relevant departments under the State Council in conjunction with the competent pricing authorities.

Article 224 — The creation or transfer of a real right in movable property shall become effective upon delivery, unless otherwise provided by law.

Article 225 — The creation, alteration, transfer, and extinguishment of real rights in vessels, aircraft, motor vehicles, and the like shall not be asserted against a bona fide third party without registration.

Article 226 — Where a right holder already occupies movable property before the real right in the movable property is created or transferred, the real right shall become effective from the time the juristic act becomes effective.

Article 227 — Where a third party occupies movable property before the real right in the movable property is created or transferred, the person obligated to deliver the property may assign the claim for restitution against the third party to the transferee in lieu of delivery.

Article 228 — Where the transferor continues to occupy the movable property after the parties agree that the transferee shall acquire the real right in the movable property at the time the agreement becomes effective, the real right shall become effective from the time the agreement becomes effective.

Article 229 — Where real rights are created, altered, transferred, or extinguished as a result of a judgment or ruling of a people’s court, an arbitral award, or an expropriation decision of a people’s government, they shall become effective upon the effectiveness of the judgment, ruling, arbitral award, or expropriation decision.

Article 230 — Where real rights are acquired through succession, they shall become effective from the commencement of the succession.

Article 231 — Where real rights are created or extinguished as a result of lawful acts such as construction or demolition of a building, they shall become effective upon the occurrence of such acts.

Article 232 — Where the disposition of a real right in immovable property enjoyed in accordance with the provisions of this Section is subject to registration as required by law, the disposition shall not have the effect of a real right without registration.

Chapter III — Protection of Real Rights

Article 233 — Where a real right is infringed upon, the right holder may resolve the matter through conciliation, mediation, arbitration, litigation, or other means.

Article 234 — Where a dispute arises over the attribution or content of a real right, an interested party may request confirmation of the right.

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

Article 235 — Where immovable or movable property under the possession of a person without the right to possess the property, the right holder may request the return of the original property.

Article 236 — Where a real right is or may be obstructed, the right holder may request the removal of the obstruction or elimination of the danger.

Article 237 — Where immovable or movable property is damaged, the right holder may request repair, reworking, replacement, or restoration to the original condition in accordance with the law.

Article 238 — Where the infringement of a real right causes damage to the right holder, the right holder may request compensation for damage in accordance with the law, and may also request the assumption of other civil liability in accordance with the law.

Article 239 — The methods for the protection of real rights provided in this Chapter may be applied separately or, as the circumstances may require, concurrently. Where the infringement of a real right causes damage to the right holder, the right holder may request compensation for damage in accordance with the law, and may also request the assumption of other civil liability in accordance with the law.

Chapter IV — General Provisions on Ownership

Article 240 — An owner shall have the right to possess, use, benefit from, and dispose of his immovable or movable property in accordance with the law.

Article 241 — An owner of immovable or movable property shall have the right to create usufruct rights and security interests. When exercising rights, the holder of a usufruct right or security interest shall not cause damage to the rights and interests of the owner.

Article 242 — Where immovable or movable property is expropriated for public interest purposes in accordance with the statutory limits of authority and procedures, the expropriation may be conducted only for the purpose of public interest as prescribed by law.

Article 243 — For the purpose of public interest, collectively owned land, and the houses and other immovable property of organizations and individuals may be expropriated in accordance with the statutory limits of authority and procedures. In the case of expropriation of collectively owned land, land compensation fees, resettlement subsidies, and compensation for rural villagers' houses, other fixtures on land, and young crops shall be paid in full and in a timely manner in accordance with the law, and social security premiums for the farmers whose land has been expropriated shall be arranged, so as to guarantee their livelihood and safeguard their lawful rights and interests. In the case of expropriation of houses and other immovable property of organizations and individuals, compensation for demolition and resettlement shall be provided in accordance with the law to safeguard the lawful rights and interests of the expropriated persons; in the case of expropriation of individual residential houses, the housing conditions of the expropriated persons shall also be guaranteed. No organization or individual may embezzle, misappropriate, privately distribute, intercept, or default on the payment of expropriation compensation or other expenses.

Article 244 — The state shall provide special protection for cultivated land, strictly limit the conversion of agricultural land to land for construction, and control the total quantity of land for construction. Collective-owned land shall not be expropriated in violation of the statutory limits of authority and procedures.

Article 245 — Where immovable or movable property of an organization or individual is requisitioned for purposes such as emergency response and disaster relief, epidemic prevention and control, or other urgent needs, the property shall be returned after use. Where the immovable or movable property of an organization or individual is requisitioned or is damaged or lost after requisition, compensation shall be provided.

Chapter V — State Ownership, Collective Ownership, and Private Ownership

Article 246 — Property that is owned by the state in accordance with the law shall be owned by the state, that is, owned by the whole people. The State Council shall exercise the ownership of state-owned property on behalf of the state, unless otherwise provided by law.

Article 247 — Mineral resources, waters, and sea areas shall be owned by the state.

Article 248 — Uninhabited islands shall be owned by the state. The State Council shall exercise the ownership of uninhabited islands on behalf of the state.

Article 249 — Urban land shall be owned by the state. Land in rural areas and suburban areas that is owned by the state as prescribed by law shall be owned by the state.

Article 250 — Natural resources such as forests, mountains, grasslands, wastelands, and mudflats shall be owned by the state, except those owned by collectives as prescribed by law.

Article 251 — Wildlife resources that are owned by the state as prescribed by law shall be owned by the state.

Article 252 — Radio frequency spectrum resources shall be owned by the state.

Article 253 — Cultural relics that are owned by the state as prescribed by law shall be owned by the state.

Article 254 — Assets for national defense shall be owned by the state. Infrastructure such as railways, highways, electric power facilities, telecommunications facilities, and oil and gas pipelines that are owned by the state as prescribed by law shall be owned by the state.

Article 255 — State organs shall have the right to possess and use, and to benefit from and dispose of in accordance with the provisions of law and the relevant regulations of the State Council, the immovable and movable property under their direct control.

Article 256 — Public institutions established by the state shall have the right to possess and use, and to benefit from and dispose of in accordance with the provisions of law and the relevant regulations of the State Council, the immovable and movable property under their direct control.

Article 257 — With respect to enterprises invested by the state, the State Council and local people's governments shall, in accordance with the provisions of laws and administrative regulations, perform the duties of investors on behalf of the state and enjoy the rights and interests of investors.

Article 258 — The state-owned property shall be protected by law, and no organization or individual may encroach upon, plunder, privately divide, intercept, or destroy state-owned property.

Article 259 — Institutions and their staff members responsible for the administration and supervision of state-owned property shall strengthen the administration and supervision of state-owned property in accordance with the law, promote the preservation and appreciation of the value of state-owned property, and prevent the loss of state-owned property; where losses are caused to state-owned property through abuse of power or dereliction of duty, legal liability shall be borne in accordance with the law. Where losses are caused to state-owned property through the transfer of state-owned property at a low price, the joint distribution of state-owned property in violation of the law, the creation of security interests in state-owned property without authorization, or other means in the process of enterprise restructuring, merger or division, or affiliated transactions in violation of the provisions on the administration of state-owned property, legal liability shall be borne in accordance with the law.

Article 260 — Collectively owned immovable and movable property shall include: (1) land, forests, mountains, grasslands, wastelands, and mudflats owned by collectives as prescribed by law; (2) collectively owned buildings, production facilities, and facilities for water conservancy in agriculture and farmland; (3) collectively owned educational, scientific, cultural, health, sports, and other facilities; and (4) other

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

collectively owned immovable and movable property.

Article 261 — Immovable and movable property owned by a farmers' collective shall be collectively owned by the members of the collective. The following matters shall be decided by the members of the collective in accordance with statutory procedures: (1) land contracting schemes and the contracting of land to organizations or individuals other than the collective; (2) adjustment of the contracted land among the holders of the right to land contractual management; (3) methods for the use and distribution of land compensation fees and other expenses; (4) matters such as changes in the ownership of enterprises invested by the collective; and (5) other matters prescribed by law.

Article 262 — With respect to collectively owned land, forests, mountains, grasslands, wastelands, mudflats, and the like, the ownership shall be exercised in accordance with the following provisions: (1) if owned by a village farmers' collective, the village collective economic organization or the villagers' committee shall exercise the ownership on behalf of the collective; (2) if owned by two or more farmers' collectives within a village, the respective collective economic organizations or villagers' groups within the village shall exercise the ownership on behalf of the collectives; and (3) if owned by a township farmers' collective, the township collective economic organization shall exercise the ownership on behalf of the collective.

Article 263 — Urban collectively owned immovable and movable property shall be owned collectively by the collective in accordance with the provisions of laws and administrative regulations. The collective shall have the right to possess, use, benefit from, and dispose of its property in accordance with the provisions of laws and administrative regulations.

Article 264 — Rural collective economic organizations, villagers' committees, and villagers' groups shall publicize the status of collective property to the members of the collective in accordance with the provisions of laws, administrative regulations, and their articles of association, and the resolutions of the villagers' meetings or villagers' representative meetings. Members of the collective shall have the right to consult and copy the relevant materials.

Article 265 — Collectively owned property shall be protected by law, and no organization or individual may encroach upon, plunder, privately divide, or destroy collectively owned property. Where a decision made by a rural collective economic organization, a villagers' committee, or the person in charge thereof infringes upon the lawful rights and interests of a member of the collective, the aggrieved member of the collective may request a people's court to revoke the decision.

Article 266 — A private individual shall have the right to own his lawful income, house, articles for daily use, production tools, raw materials, and other immovable and movable property.

Article 267 — The lawful property of a private individual shall be protected by law, and no organization or individual may encroach upon, plunder, or destroy such property.

Article 268 — The state, collectives, and private individuals may, in accordance with the law, invest capital to establish limited liability companies, companies limited by shares, or other enterprises. Where the immovable or movable property of the state, collectives, or private individuals is invested in an enterprise, the investors shall, in accordance with the agreement or the proportion of their investment, enjoy the rights to asset returns, make major decisions, select managers, and assume the corresponding obligations.

Article 269 — A for-profit legal person shall have the right to possess, use, benefit from, and dispose of its immovable and movable property in accordance with the provisions of laws, administrative regulations, and its articles of association. The provisions of the relevant laws, administrative regulations, and articles of association shall apply to the rights of a legal person other than a for-profit legal person with respect to its immovable and movable property.

Article 270 — The lawful property of social organization legal persons and donor-funded legal persons shall be protected by law.

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

Chapter VI — Owners' Condominium Rights in Buildings

Article 271 — An owner shall enjoy the ownership of the exclusive parts of a building, such as residential and commercial premises, and shall have the right to co-own and jointly manage the common parts other than the exclusive parts of the building.

Article 272 — An owner shall enjoy the right to possess, use, benefit from, and dispose of the exclusive parts of a building. When exercising rights, the owner shall not endanger the safety of the building or impair the lawful rights and interests of other owners.

Article 273 — An owner shall enjoy rights and assume obligations with respect to the common parts other than the exclusive parts of the building, and shall not refuse to perform obligations on the ground of having waived rights. When an owner transfers his residential or commercial premises, his right to co-own and jointly manage the common parts shall be transferred simultaneously.

Article 274 — Roads within a building zone shall be co-owned by the owners, except for urban public roads. Greenery within a building zone shall be co-owned by the owners, except for urban public greenery or greenery that is expressly owned by individuals. Other public places, public facilities, and buildings used for property services within a building zone shall be co-owned by the owners.

Article 275 — The attribution of parking spaces and garages planned for parking motor vehicles within a building zone shall be agreed upon by the parties through sale, gift, lease, or other means. Parking spaces that occupy roads co-owned by the owners or other sites co-owned by the owners for parking motor vehicles shall be co-owned by the owners.

Article 276 — Parking spaces and garages planned for parking motor vehicles within a building zone shall first meet the needs of the owners.

Article 277 — The owners may establish an owners' assembly and elect an owners' committee. The specific conditions and procedures for the establishment of the owners' assembly and the owners' committee shall be provided for in laws and regulations. The relevant departments of the local people's government and the residents' committee shall provide guidance and assistance for the establishment of the owners' assembly and the election of the owners' committee.

Article 278 — The following matters shall be decided by the owners jointly: (1) to formulate and amend the rules of procedure of the owners' assembly; (2) to formulate and amend the management rules and covenants; (3) to elect or replace the owners' committee; (4) to select, dismiss, and decide on the change of the property service enterprise or other manager; (5) to use the funds for the maintenance of the building and its ancillary facilities; (6) to raise funds for the maintenance of the building and its ancillary facilities; (7) to renovate or reconstruct the building and its ancillary facilities; (8) to change the use of the common parts or use the common parts to engage in business activities; and (9) other major matters concerning the rights of co-ownership and joint management. The owners shall decide the matters provided for in the preceding paragraph by an agreement of the owners whose voting area and number of owners both reach a certain proportion. The specific proportion shall be prescribed by law.

Article 279 — An owner shall not, in violation of laws, regulations, or management rules and covenants, convert a residential unit into a commercial unit. Where an owner converts a residential unit into a commercial unit, the owner shall, in addition to complying with the provisions of laws, regulations, and management rules and covenants, obtain the consent of the owners of the units that are affected by the conversion.

Article 280 — The decisions of the owners' assembly or the owners' committee shall be binding on the owners. Where a decision of the owners' assembly or the owners' committee infringes upon the lawful rights and interests of an owner, the aggrieved owner may request the people's court to revoke the decision.

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

Article 281 — The funds for the maintenance of a building and its ancillary facilities shall be co-owned by the owners. The funds may be used for the maintenance, renewal, and renovation of the common parts such as elevators, roofs, exterior walls, and barrier-free facilities after a decision has been made jointly by the owners. The information on the collection and use of the funds for the maintenance of the building and its ancillary facilities shall be published periodically. Where emergency repairs are required for the common parts of the building and its ancillary facilities such as elevators, fire-fighting facilities, and the like, the owners' assembly or the owners' committee may apply for the use of the funds for the maintenance of the building and its ancillary facilities in accordance with the law.

Article 282 — The income generated from the use of the common parts by the construction unit, the property service enterprise, or other managers, after deducting reasonable costs, shall be co-owned by the owners.

Article 283 — Where there is an agreement on the allocation of expenses for the building and its ancillary facilities and the distribution of income, such agreement shall prevail; in the absence of an agreement or where the agreement is unclear, the allocation and distribution shall be determined in proportion to the area of the owners' exclusive parts.

Article 284 — The owners may manage the building and its ancillary facilities by themselves or entrust a property service enterprise or other manager to manage them. The owners shall have the right to replace a property service enterprise or other manager engaged by the construction unit in accordance with the law.

Article 285 — A property service enterprise or other manager shall, as entrusted by the owners, manage the building and its ancillary facilities within the building zone in accordance with the provisions of Part Three of this Code on property service contracts, accept the supervision of the owners, and respond to the owners' inquiries on property services in a timely manner. A property service enterprise or other manager shall implement the emergency response measures and other management measures taken by the government in accordance with the law and actively cooperate in carrying out the relevant work.

Article 286 — The owners shall abide by the provisions of laws, regulations, and management rules and covenants, and their relevant acts shall meet the requirements of resource conservation and ecological environmental protection. For emergency response and other management measures taken by the government in accordance with the law, the owners shall provide cooperation in accordance with the law. With respect to an act that impairs the lawful rights and interests of others, such as the emission of air pollutants, discharge of wastewater, generation of noise, release of light pollution, arbitrary disposal of waste, violation of regulations by keeping animals, construction of structures in violation of rules, occupation of passages, or refusal to pay property management fees, the owners' assembly or the owners' committee shall have the right to request the actor to cease the infringement, remove the obstruction, eliminate the danger, restore the original condition, and compensate for losses in accordance with the provisions of laws, regulations, and management rules and covenants. Where an owner or an actor refuses to perform the relevant obligations, the relevant party may file a complaint or report with the relevant administrative department, which shall handle the matter in accordance with the law.

Article 287 — Where an owner's lawful rights and interests are infringed upon by an act of the construction unit, the property service enterprise or other manager, or other owners, the owner shall have the right to request the actor to bear civil liability.

Chapter VII — Neighboring Relations

Article 288 — The right holders of neighboring immovable property shall correctly handle the neighboring relations in accordance with the principles of facilitating production, benefiting daily life, solidarity and mutual assistance, and fairness and reasonableness.

Article 289 — Where laws and regulations have provisions on neighboring relations, such provisions shall apply; in the absence of such provisions, local customs may be followed.

Article 290 — A right holder of immovable property shall provide the necessary convenience for a neighboring right holder in the use of water, drainage, passage, and the like. A right holder of immovable property shall provide the necessary convenience for a neighboring right holder in the use of his land; where damage is caused, compensation shall be provided.

Article 291 — Where a right holder of immovable property must use another right holder's land or building for passage or other purposes, the necessary convenience shall be provided.

Article 292 — Where a right holder of immovable property needs to use another right holder's land or building for construction, repair of a building, or the laying of electric wires, cables, water pipes, heating pipes, or gas pipes, and the like, the right holder of the land or building shall provide the necessary convenience.

Article 293 — The construction of a building shall not contravene the state's engineering construction standards, nor obstruct the ventilation, lighting, or sunlight of neighboring buildings.

Article 294 — A right holder of immovable property shall not, in violation of state regulations, discharge air pollutants, water pollutants, soil pollutants, solid wastes, or discharge noise, light radiation, electromagnetic radiation, or other hazardous substances.

Article 295 — A right holder of immovable property shall not endanger the safety of neighboring immovable property when excavating land, constructing a building, laying pipelines, installing equipment, or the like.

Article 296 — When using water, drainage, passage, pipelines, or the like from neighboring immovable property, a right holder of immovable property shall try to avoid causing damage to neighboring right holders of immovable property.

Chapter VIII — Co-ownership

Article 297 — Immovable or movable property may be co-owned by two or more organizations or individuals. Co-ownership includes co-ownership by shares and joint co-ownership.

Article 298 — Co-owners by shares shall enjoy the ownership of the co-owned immovable or movable property in proportion to their respective shares.

Article 299 — Joint co-owners shall jointly enjoy the ownership of the co-owned immovable or movable property.

Article 300 — Co-owners shall manage the co-owned immovable or movable property in accordance with their agreement; in the absence of an agreement or where the agreement is unclear, each co-owner shall have the right and obligation to manage the property.

Article 301 — The disposal of co-owned immovable or movable property, or the major repair or alteration of the nature of co-owned immovable or movable property, shall be subject to the consent of co-owners by shares holding two-thirds or more of the shares or all joint co-owners, unless otherwise agreed upon by the co-owners.

Article 302 — The management expenses and other burdens on co-owned property shall be borne in accordance with the agreement of the co-owners, if any; in the absence of an agreement or where the agreement is unclear, co-owners by shares shall bear them in proportion to their respective shares, and joint co-owners shall bear them jointly.

Article 303 — Where the co-owners have agreed not to partition the co-owned immovable or movable property in order to maintain the co-ownership relationship, such agreement shall be followed; however, a co-owner who has a major reason for partitioning may request partition; in the absence of an agreement or where the agreement is unclear, a co-owner by shares may request partition at any time, and a joint co-owner may request partition when the basis for the co-ownership ceases to exist or when there is a major

reason for partition. Where partition causes damage to other co-owners, compensation shall be provided.

Article 304 — Co-owners may determine the method of partition through negotiation. Where no agreement is reached, and the co-owned immovable or movable property can be partitioned without diminishing its value, the property in kind shall be partitioned; where partition is difficult or would diminish the value, the proceeds from the conversion into money, auction, or sale of the property shall be partitioned. Where the immovable or movable property acquired by a co-owner through partition is defective, the other co-owners shall share the losses.

Article 305 — A co-owner by shares may transfer his share of the co-owned immovable or movable property. The other co-owners shall have a preemptive right to purchase the share under equal conditions.

Article 306 — Where a co-owner by shares transfers his share of the co-owned immovable or movable property, he shall notify the other co-owners of the conditions of transfer in a timely manner. The other co-owners shall exercise the preemptive right within a reasonable period of time. Where two or more other co-owners claim the preemptive right, they shall determine the proportion of their respective purchases through negotiation; where no agreement is reached through negotiation, they shall exercise the preemptive right in proportion to their respective shares at the time of the transfer.

Article 307 — Where a creditor's right or a debt arises from co-owned immovable or movable property, the co-owners shall enjoy the creditor's right and bear the debt jointly unless otherwise provided by law or otherwise agreed upon by a third party who knows that the co-owners do not have a joint creditor-debtor relationship. With respect to a debt arising from co-owned immovable or movable property, co-owners by shares shall bear the debt in proportion to their respective shares, and joint co-owners shall bear the debt jointly. Where a co-owner who has overpaid his share of the debt has the right to seek recovery from other co-owners.

Article 308 — Where the co-owners have not agreed on whether the immovable or movable property is co-owned by shares or jointly co-owned, or where the agreement is unclear, the property shall be deemed co-owned by shares, except where there is a family relationship or other relationship between the co-owners.

Article 309 — The shares of co-owners by shares in co-owned immovable or movable property shall be determined in accordance with the agreement reached by the co-owners, if any; in the absence of an agreement or where the agreement is unclear, the shares shall be determined in proportion to the amount of capital contribution; where the proportion of capital contribution cannot be determined, the co-owners shall be deemed to have equal shares.

Article 310 — Where two or more organizations or individuals jointly enjoy usufruct rights or security interests, the relevant provisions of this Chapter shall apply mutatis mutandis.

Chapter IX — Special Provisions on the Acquisition of Ownership

Article 311 — Where a person without the right to dispose of immovable or movable property transfers it to a transferee, the owner shall have the right to recover it. Unless otherwise provided by law, the transferee shall acquire the ownership of the immovable or movable property under the following circumstances: (1) the transferee accepted the transfer in good faith; (2) the transfer was made at a reasonable price; and (3) the transferred immovable or movable property has been registered if registration is required by law, or has been delivered to the transferee if registration is not required. Where the transferee acquires the ownership of the immovable or movable property in accordance with the provisions of the preceding paragraph, the original owner shall have the right to claim damages from the person who disposed of the property without the right to do so. Where a party acquires other real rights in good faith, the provisions of the preceding two paragraphs shall apply mutatis mutandis.

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

Article 312 — Where an owner or other right holder has the right to recover lost property, and the lost property is possessed by another person through a transfer, the owner or other right holder shall have the right to recover the lost property from the person who disposes of the property without the right to do so, or to request the transferee to return the original property after the expiration of two years from the date on which the owner or other right holder knew or ought to have known of the transferee. However, where the transferee purchased the lost property through auction or from a qualified dealer, the right holder shall pay the transferee the expenses paid by the transferee when requesting the return of the original property. After paying the expenses to the transferee, the right holder shall have the right to seek recovery from the person who disposed of the property without the right to do so.

Article 313 — After a bona fide transferee acquires the movable property, the original rights in the movable property shall be extinguished, unless the bona fide transferee knew or ought to have known of such rights at the time of the transfer.

Article 314 — A person who finds lost property shall return it to the right holder. The finder shall notify the right holder to retrieve the property in a timely manner or deliver it to the relevant public security department or other department.

Article 315 — Where the relevant department receives lost property and knows the right holder, it shall notify the right holder to retrieve the property in a timely manner; where the right holder is unknown, it shall issue a notice of the retrieval of the lost property in a timely manner.

Article 316 — A finder shall properly keep the lost property before delivering it to the relevant department and before it is retrieved. Where the lost property is damaged or lost due to the finder’s intentional act or gross negligence, the finder shall bear civil liability.

Article 317 — The right holder shall pay the finder or the relevant department the necessary expenses incurred for keeping the lost property and other expenses when retrieving the lost property. Where a right holder offers a reward for the finding of the lost property, the finder shall be entitled to the reward when the right holder retrieves the lost property. Where a finder misappropriates the lost property, the finder shall not be entitled to the reimbursement of the expenses incurred for keeping the lost property or other expenses, nor shall the finder be entitled to the reward offered by the right holder.

Article 318 — Where lost property remains unclaimed one year after the date of the notice of the retrieval of the lost property, it shall be escheated to the state.

Article 319 — Floating property, buried property, or hidden property discovered by a person shall be governed by the provisions on lost property, unless otherwise provided by law.

Article 320 — Where a usufruct right or security interest in the principal thing is transferred, the transferee shall acquire the accessory to the principal thing, unless otherwise agreed upon by the parties.

Article 321 — The natural fruits of immovable or movable property shall be acquired by the owner; where there is both an owner and a usufruct right holder, the fruits shall be acquired by the usufruct right holder, unless otherwise agreed upon by the parties. The legal fruits of immovable or movable property shall be acquired in accordance with the agreement of the parties; in the absence of an agreement or where the agreement is unclear, the fruits shall be acquired in accordance with the customary practice in the transaction.

Article 322 — Where immovable or movable property is created as a result of processing, combining, or mixing, the attribution of the real right shall be agreed upon by the parties; in the absence of an agreement or where the agreement is unclear, the attribution shall be determined in accordance with the provisions of law; where the law has no provisions, the attribution shall be determined in accordance with the principle of giving full play to the utility of the property and protecting the party that is not at fault. Where a party who has suffered damage as a result of the acts referred to in the preceding paragraph is at fault, the party shall bear

the liability for compensation or provide compensation.

Chapter X — Usufruct Rights — General Provisions

Article 323 — A usufruct right holder shall have the right to possess, use, and benefit from immovable or movable property owned by another person in accordance with the provisions of law.

Article 324 — Organizations and individuals may possess, use, and benefit from natural resources owned by the state or collectives, or those owned by the state but used by collectives in accordance with the provisions of law.

Article 325 — The state shall implement a system of compensation for the use of natural resources, unless otherwise provided by law.

Article 326 — When exercising rights, a usufruct right holder shall comply with the provisions of law on the protection and reasonable exploitation and utilization of resources and the protection of the ecological environment. The owner shall not interfere with the exercise of rights by the usufruct right holder.

Article 327 — Where a usufruct right is extinguished as a result of expropriation or requisition of immovable or movable property, the usufruct right holder shall have the right to receive compensation in accordance with the provisions of Articles 243 and 245 of this Code.

Article 328 — The right to use sea areas that is obtained in accordance with the law shall be protected by law.

Article 329 — The right to prospect for and mine minerals, the right to draw water, and the right to use water areas and mudflats for breeding that are obtained in accordance with the law shall be protected by law.

Chapter XI — Right to Land Contractual Management

Article 330 — Rural collective economic organizations shall implement a two-tier management system that combines unified management with separate management based on household contractual management. Cultivated land, forestland, grassland, and other agricultural land used for agriculture that is owned by farmers' collectives or owned by the state and used by farmers' collectives in accordance with the law shall be subject to a system of land contractual management.

Article 331 — The holder of the right to land contractual management shall have the right to possess, use, and benefit from the cultivated land, forestland, grassland, and other land contracted for management in accordance with the law, and shall have the right to engage in agricultural production such as crop cultivation, forestry, animal husbandry, and the like.

Article 332 — The term of contractual management of cultivated land shall be 30 years. The term of contractual management of grassland shall be 30 to 50 years. The term of contractual management of forestland shall be 30 to 70 years. Upon the expiration of the term of contractual management as provided in the preceding paragraph, the holder of the right to land contractual management shall continue to contract the land in accordance with the provisions of the law on rural land contracting.

Article 333 — The right to land contractual management shall be created when the contract for land contractual management becomes effective. The registration authority shall issue a certificate of the right to land contractual management, a certificate of the right to forestland, or other certificates to the holder of the right to land contractual management and shall register them, confirming the right to land contractual management.

Article 334 — The holder of the right to land contractual management shall have the right to exchange or transfer the right to land contractual management in accordance with the provisions of law. No change in the use of the contracted land for non-agricultural construction shall be permitted without approval in accordance

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

with the law.

Article 335 — Where the right to land contractual management is exchanged or transferred, the parties may apply for registration with the registration authority; without registration, such exchange or transfer shall not be asserted against a bona fide third party.

Article 336 — During the term of the contract, the party contracting out the land shall not adjust the contracted land. Under special circumstances such as severe damage to the contracted land caused by natural disasters, appropriate adjustment of the contracted cultivated land and grassland shall be made in accordance with the provisions of the law on rural land contracting.

Article 337 — During the term of the contract, the party contracting out the land shall not take back the contracted land, unless otherwise provided by law.

Article 338 — Where the contracted land is expropriated, the holder of the right to land contractual management shall have the right to receive corresponding compensation in accordance with the provisions of Article 243 of this Code.

Article 339 — The holder of the right to land contractual management may, by means of lease, equity contribution, mortgage, or other means, transfer the right to operate the land to another person in accordance with the provisions of law.

Article 340 — The holder of the right to operate the land shall have the right to possess the contracted land, carry out agricultural production and operation independently within the term agreed in the contract, and obtain income from the land.

Article 341 — Where the right to operate the land with a term of five years or more is created, the parties may apply for registration with the registration authority; without registration, the creation shall not be asserted against a bona fide third party.

Article 342 — Where rural land such as barren hills, barren ditches, barren hills, and barren mudflats is contracted through bidding, auction, open negotiation, or other means, the right to land contractual management obtained in accordance with the law may be transferred, contributed as equity, mortgaged, or otherwise disposed of provided that the registration of the ownership of the right has been obtained in accordance with the law.

Article 343 — The right to contractual management of state-owned agricultural land that is subject to contractual management shall be governed by the relevant provisions of this Book mutatis mutandis.

Chapter XII — Right to Use Land for Construction

Article 344 — The holder of the right to use land for construction shall have the right to possess, use, and benefit from land owned by the state in accordance with the law, and shall have the right to use the land to construct buildings, structures, and their ancillary facilities.

Article 345 — The right to use land for construction may be created on the surface, above the surface, or below the surface of the land.

Article 346 — The creation of the right to use land for construction shall comply with the requirements of resource conservation and ecological environmental protection, and shall comply with the provisions of laws and administrative regulations on the use of land and shall not impair the usufruct rights that have already been created.

Article 347 — The right to use land for construction may be created by way of transfer, allocation, or other means. Where land is used for industrial, commercial, tourism, entertainment, or commercial residential purposes, or where the same parcel of land is intended by two or more persons, the right to use land for construction shall be created by way of bidding, auction, or other competitive means. The creation of the

right to use land for construction by way of allocation shall be strictly restricted.

Article 348 — Where the right to use land for construction is created by way of bidding, auction, agreement, or other means of transfer, the parties shall enter into a written contract for the transfer of the right to use land for construction. The contract shall generally include the following terms: (1) the name and domicile of the parties; (2) the location, area, and boundaries of the land; (3) the space occupied by the buildings, structures, and their ancillary facilities; (4) the purpose of the land; (5) the term of the right to use the land; (6) the transfer fee and other fees and the method of payment; and (7) the method of dispute resolution.

Article 349 — The creation of the right to use land for construction shall be registered with the registration authority. The right to use land for construction shall be created upon registration. The registration authority shall issue a certificate of the right to use land for construction to the holder of the right.

Article 350 — The holder of the right to use land for construction shall make reasonable use of the land and shall not change the purpose of the land without approval in accordance with the law; where a change in the purpose of the land is required, approval shall be obtained from the administrative department of land resources in accordance with the law.

Article 351 — The holder of the right to use land for construction shall pay the transfer fee and other fees in accordance with the provisions of law and the agreement in the contract.

Article 352 — The ownership of buildings, structures, and their ancillary facilities constructed by the holder of the right to use land for construction shall belong to the holder of the right to use land for construction, unless there is evidence to the contrary.

Article 353 — The holder of the right to use land for construction shall have the right to transfer, exchange, contribute as equity, give as a gift, or mortgage the right to use land for construction, unless otherwise provided by law.

Article 354 — Where the right to use land for construction is transferred, exchanged, contributed as equity, given as a gift, or mortgaged, the parties shall enter into a written contract. The term of the right to use land for construction shall be agreed upon by the parties, provided that it shall not exceed the remaining term of the right to use land for construction.

Article 355 — Where the right to use land for construction is transferred, exchanged, contributed as equity, or given as a gift, an application for registration of the change shall be filed with the registration authority.

Article 356 — Where the right to use land for construction is transferred, exchanged, contributed as equity, or given as a gift, the buildings, structures, and their ancillary facilities attached to the land shall be disposed of simultaneously.

Article 357 — Where buildings, structures, and their ancillary facilities are transferred, exchanged, contributed as equity, or given as a gift, the right to use land for construction within the area occupied by such buildings, structures, and their ancillary facilities shall be disposed of simultaneously.

Article 358 — Before the expiration of the term of the right to use land for construction, the right shall not be withdrawn in advance, except where the land needs to be withdrawn for public interest purposes. Where the land is withdrawn for public interest purposes in accordance with the provisions of the preceding paragraph, compensation shall be provided for the buildings, structures, and their ancillary facilities on the land and the remaining term of the right to use land for construction, and the corresponding transfer fee paid shall be refunded.

Article 359 — The right to use land for construction for residential purposes shall be automatically renewed upon expiration of the term. The payment, reduction, or exemption of the renewal fee for the right to use land for construction for non-residential purposes shall be governed by the provisions of laws and administrative regulations. The ownership of buildings, structures, and their ancillary facilities on the land to which the right

to use land for construction has expired shall be agreed upon by the parties; in the absence of an agreement or where the agreement is unclear, such ownership shall be governed by the provisions of laws and administrative regulations.

Article 360 — Where the right to use land for construction is extinguished, the transferor shall deregister the right in a timely manner. The registration authority shall recover the certificate of the right to use land for construction.

Article 361 — The right to use land for construction on collectively owned land shall be governed by the provisions of the Law on Land Administration and other laws.

Chapter XIII — Right to Use Residential Land

Article 362 — The holder of the right to use residential land shall have the right to possess and use collectively owned land in accordance with the law, and shall have the right to use the land to construct residential buildings and their ancillary facilities.

Article 363 — The acquisition, exercise, and transfer of the right to use residential land shall be governed by the provisions of the Law on Land Administration and the relevant regulations of the state.

Article 364 — Where the residential land is extinguished due to natural disasters or other causes, the right to use the residential land shall also be extinguished. New residential land shall be allocated to the villagers who have lost their residential land.

Article 365 — Where a registered right to use residential land has been transferred or extinguished, the registration of the change or deregistration shall be handled in a timely manner.

Chapter XIV — Right of Habitation

Article 366 — The holder of the right of habitation shall have the usufruct right to occupy and use the residential premises of another person in accordance with the agreement in the contract, so as to meet the needs of living and habitation.

Article 367 — The right of habitation shall be created by a written contract or will between the parties. The contract shall generally include the following terms: (1) the name and domicile of the parties; (2) the location of the residential premises; (3) the conditions and requirements for habitation; (4) the term of the right of habitation; and (5) the method of dispute resolution.

Article 368 — The right of habitation shall be created upon registration. The right of habitation shall be created upon registration. Where a will or other means is used to create the right of habitation, the provisions of this Chapter shall apply mutatis mutandis.

Article 369 — The right of habitation shall not be transferred or inherited. The residential premises for which the right of habitation has been created shall not be leased, unless otherwise agreed upon by the parties.

Article 370 — The right of habitation shall be extinguished upon the expiration of the term of the right of habitation or the death of the holder of the right of habitation. Upon the extinguishment of the right of habitation, the deregistration shall be handled in a timely manner.

Article 371 — Where the right of habitation is created by will, the relevant provisions of this Chapter shall apply mutatis mutandis.

Chapter XV — Easements

Article 372 — The holder of an easement shall have the right to use the immovable property of another person in accordance with the agreement in the contract, so as to enhance the utility of his own immovable property. The immovable property of another person referred to in the preceding paragraph is the servient

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

land, and one's own immovable property is the dominant land.

Article 373 — The creation of an easement shall be made by a written contract between the parties. The contract shall generally include the following terms: (1) the name and domicile of the parties; (2) the locations of the servient land and the dominant land; (3) the purpose and method of use; (4) the term of the easement; (5) the fee and its method of payment; and (6) the method of dispute resolution.

Article 374 — An easement shall be created upon the effectiveness of the easement contract. Where the parties request registration, they may apply to the registration authority for the registration of the easement; without registration, the easement shall not be asserted against a bona fide third party.

Article 375 — The right holder of the servient land shall, in accordance with the agreement in the contract, allow the easement holder to use his immovable property and shall not interfere with the exercise of the easement holder's rights.

Article 376 — The easement holder shall use the servient land in accordance with the purpose and method of use agreed upon in the contract and shall try to minimize restrictions on the real rights of the right holder of the servient land.

Article 377 — The term of an easement shall be agreed upon by the parties, provided that it shall not exceed the remaining term of the usufruct right such as the right to land contractual management or the right to use land for construction.

Article 378 — Where the owner of the land enjoys or is burdened with an easement, when the right to land contractual management, the right to use residential land, or other usufruct rights are created, the usufruct right holder shall continue to enjoy or be burdened with the easement that has been created.

Article 379 — Where the right to land contractual management, the right to use land for construction, the right to use residential land, or other usufruct rights have already been created on the land, the owner of the land shall not create an easement without the consent of the usufruct right holder.

Article 380 — An easement shall not be transferred separately. Where the right to land contractual management, the right to use land for construction, the right to use residential land, or other rights are transferred, the easement shall be transferred simultaneously, unless otherwise agreed upon in the contract.

Article 381 — An easement shall not be mortgaged separately. Where the right to land contractual management, the right to use land for construction, the right to use residential land, or other rights are mortgaged, the easement shall be transferred simultaneously upon the realization of the mortgage.

Article 382 — Where the dominant land and the right to land contractual management, the right to use land for construction, the right to use residential land, or other rights on the dominant land are partially transferred, and the transferred part involves the easement, the transferee shall simultaneously enjoy the easement.

Article 383 — Where the servient land and the right to land contractual management, the right to use land for construction, the right to use residential land, or other rights on the servient land are partially transferred, and the transferred part involves the easement, the easement shall be binding on the transferee.

Article 384 — Where an easement holder falls under any of the following circumstances, the right holder of the servient land shall have the right to terminate the easement contract, and the easement shall be extinguished: (1) unlawfully abusing the easement in violation of the provisions of law or the agreement in the contract; (2) failing to pay the fee after being urged to do so despite having paid the fee for two installments upon expiration of the payment term agreed upon in the contract; or (3) other circumstances agreed upon in the contract.

Article 385 — Where a registered easement has been altered, transferred, or extinguished, the registration of the change or the deregistration shall be handled in a timely manner.

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

Chapter XVI — Security Interests — General Provisions

Article 386 — A holder of a security interest shall have the right to receive priority payment from the secured property in accordance with the law in the event that the debtor fails to pay the debt when due or when the circumstances agreed upon by the parties for the realization of the security interest arise, unless otherwise provided by law.

Article 387 — Where a creditor needs security to ensure the realization of its creditor's rights in civil activities such as lending or buying and selling, a security interest may be created in accordance with the provisions of this Code and other laws. Where a third party provides security to the creditor for the debtor, the debtor may be requested to provide a counter-security. The provisions of this Code and other laws shall apply to counter-security.

Article 388 — For the creation of a security interest, a security contract shall be concluded in accordance with the provisions of this Code and other laws. Security contracts include mortgage contracts, pledge contracts, and other contracts with the function of security. A security contract shall be an accessory contract to the principal contract of creditor's rights and debts. Where the principal contract of creditor's rights and debts is void, the security contract shall also be void, unless otherwise provided by law. Where the security contract is determined to be void, and the debtor, the security provider, and the creditor are at fault, they shall bear corresponding civil liability in accordance with their respective faults.

Article 389 — The scope of security shall include the principal creditor's right and its interest, liquidated damages, damages, and the expenses for keeping the secured property and realizing the security interest, unless otherwise agreed upon by the parties.

Article 390 — Where the secured property is damaged, lost, or expropriated during the period of security, the holder of the security interest may receive priority payment from the insurance money, compensation, or indemnity. The holder of the security interest may also submit the insurance money, compensation, or indemnity to a competent authority for depositing before the period for the performance of the secured creditor's right expires.

Article 391 — Where a third party provides security and the creditor permits the debtor to transfer all or part of the debt without the written consent of the third party, the security provider shall no longer bear the corresponding security liability.

Article 392 — Where a creditor's right is secured by both a real right and a personal guarantee, and the debtor fails to pay the debt when due or when the circumstances agreed upon by the parties for the realization of the security interest arise, the creditor shall realize the creditor's right in accordance with the agreement; in the absence of an agreement or where the agreement is unclear, and the debtor provides the security by way of a real right, the creditor shall first realize the creditor's right against the security provided by the debtor; where the security is provided by a third party, the creditor may realize the creditor's right against the security provided by the third party or request the guarantor to assume the guarantee liability. After assuming the security liability, the third party providing the security shall have the right to seek recovery from the debtor.

Article 393 — A security interest shall be extinguished under any of the following circumstances: (1) the principal creditor's right has been extinguished; (2) the security interest has been realized; (3) the creditor has waived the security interest; or (4) other circumstances prescribed by law for the extinguishment of a security interest.

Chapter XVII — Mortgage

Article 394 — Where a debtor or a third party does not transfer possession of the property but mortgages the property to the creditor to secure the performance of an obligation, and the debtor fails to pay the debt when

due or when the circumstances agreed upon by the parties for the realization of the mortgage arise, the creditor shall have the right to receive priority payment from the property. The debtor or the third party referred to in the preceding paragraph is the mortgagor, the creditor is the mortgagee, and the property provided as security is the mortgaged property.

Article 395 — The following property that the debtor or a third party has the right to dispose of may be mortgaged: (1) buildings and other fixtures on land; (2) the right to use land for construction; (3) the right to use sea areas; (4) production equipment, raw materials, semi-finished products, and finished products; (5) buildings, vessels, and aircraft under construction; (6) means of transport; and (7) other property that is not prohibited from being mortgaged by laws and administrative regulations. A mortgagor may mortgage the property listed in the preceding paragraph together.

Article 396 — Where an enterprise, an individual industrial and commercial household, or an agricultural production operator mortgages the production equipment, raw materials, semi-finished products, and finished products that it currently has or will have in the future, and the debtor fails to pay the debt when due or when the circumstances agreed upon by the parties for the realization of the mortgage arise, the creditor shall have the right to receive priority payment from the movable property at the time when the mortgage is performed.

Article 397 — Where a building is mortgaged, the right to use land for construction within the area occupied by the building shall be mortgaged simultaneously. Where the right to use land for construction is mortgaged, the buildings on the land shall be mortgaged simultaneously. Where a mortgagor fails to mortgage the property simultaneously in accordance with the provisions of the preceding paragraph, the property not mortgaged shall be deemed to have been mortgaged simultaneously.

Article 398 — The right to use land for construction of a township or village enterprise shall not be mortgaged separately. Where buildings such as factories of a township or village enterprise are mortgaged, the right to use land for construction within the area occupied by such buildings shall be mortgaged simultaneously.

Article 399 — The following property shall not be mortgaged: (1) land ownership; (2) the right to use collectively owned land such as cultivated land, residential land, land set aside for private use, and hilly land set aside for private use, unless otherwise provided by law; (3) educational, medical, health, and other public welfare facilities of institutions and social organizations established for public welfare purposes, such as schools, kindergartens, and medical institutions; (4) property whose ownership or right to use is unclear or in dispute; (5) property that has been sealed up, seized, or subjected to supervision in accordance with the law; and (6) other property that shall not be mortgaged in accordance with the provisions of laws and administrative regulations.

Article 400 — For the creation of a mortgage, the parties shall enter into a written mortgage contract. The mortgage contract shall generally include the following terms: (1) the type and amount of the secured creditor’s right; (2) the term for the debtor to perform the obligation; (3) the name, quantity, quality, condition, location, attribution of ownership, or right to use of the mortgaged property; and (4) the scope of the security interest.

Article 401 — Where the parties agree in the mortgage contract that the ownership of the mortgaged property shall be transferred to the creditor if the debtor fails to pay the debt when due, such agreement shall be void. However, the creditor may receive priority payment from the mortgaged property in accordance with the law.

Article 402 — For the mortgage of the property listed in Items (1) to (3) of the first paragraph of Article 395 of this Code or the building under construction listed in Item (5), the mortgage registration shall be handled. The mortgage shall be created upon registration.

Article 403 — For the mortgage of movable property, the mortgage shall be created upon the effectiveness of the mortgage contract; without registration, the mortgage shall not be asserted against a bona fide third party.

Article 404 — Where movable property is mortgaged, the mortgagee shall not assert the mortgage against a buyer who has paid a reasonable price and acquired the mortgaged property in the ordinary course of business.

Article 405 — Where the mortgaged property has been leased and the possession thereof has been transferred before the creation of the mortgage, the lease relationship shall not be affected by the mortgage.

Article 406 — A mortgagor may transfer the mortgaged property during the period of the mortgage, unless otherwise agreed upon by the parties. The mortgage shall not be affected by the transfer of the mortgaged property. Where a mortgagor transfers the mortgaged property, he shall promptly notify the mortgagee. Where the mortgagee can prove that the transfer of the mortgaged property may prejudice the mortgage, he may request the mortgagor to pay off the debt with the proceeds from the transfer or submit the proceeds to a competent authority for depositing. The part of the proceeds from the transfer that exceeds the amount of the creditor's right shall belong to the mortgagor, and the shortfall shall be paid by the debtor.

Article 407 — A mortgage shall not be transferred separately from the creditor's right, nor shall it be used as security for another creditor's right. Where a creditor's right is transferred, the mortgage securing the creditor's right shall be transferred simultaneously, unless otherwise provided by law or otherwise agreed upon by the parties.

Article 408 — Where the act of a mortgagor is sufficient to cause a decrease in the value of the mortgaged property, the mortgagee shall have the right to request the mortgagor to cease such act. Where the value of the mortgaged property decreases, the mortgagee shall have the right to request the mortgagor to restore the value of the mortgaged property or provide security corresponding to the decreased value, unless the decrease in value was caused by the mortgagor's fault.

Article 409 — A mortgagee may waive the mortgage or the sequence of the mortgage. Where a mortgagee and a mortgagor agree to change the sequence of the mortgage and the amount of the secured creditor's right, such change shall not adversely affect other mortgagees without their written consent. Where a debtor creates a mortgage on his own property, and the mortgagee waives the mortgage, the sequence of the mortgage, or changes the mortgage, other security providers shall be exempted from the security liability to the extent that the mortgagee has lost the right to receive priority payment, unless the other security providers continue to undertake to provide security.

Article 410 — Where the debtor fails to pay the debt when due or when the circumstances agreed upon by the parties for the realization of the mortgage arise, the mortgagee may agree with the mortgagor to convert the mortgaged property into money or receive priority payment from the proceeds from the auction or sale of the mortgaged property. Where the agreement prejudices the interests of other creditors, the other creditors may request the people's court to revoke the agreement. Where the mortgagee and the mortgagor fail to reach an agreement on the method of realizing the mortgage, the mortgagee may request the people's court to auction or sell the mortgaged property. The mortgaged property shall be converted into money or sold at a price determined by reference to the market price.

Article 411 — Where a floating mortgage is created in accordance with the provisions of Article 396 of this Code, the mortgaged property shall be determined when any of the following circumstances occurs: (1) the debt becomes due and the creditor's right is not realized; (2) the mortgagor is declared bankrupt or dissolved; (3) the circumstances agreed upon by the parties for the realization of the mortgage arise; or (4) other circumstances that seriously affect the realization of the creditor's right.

Article 412 — Where the mortgaged property is seized by a people's court in accordance with the law as of the date of the seizure, the mortgagee shall have the right to collect the natural fruits or legal fruits of the mortgaged property, unless the mortgagee fails to notify the obligor who is obligated to pay the legal fruits. The fruits referred to in the preceding paragraph shall first be used to offset the expenses for collecting the fruits.

Article 413 — Where the mortgaged property is converted into money, sold, or auctioned, the part of the proceeds that exceeds the amount of the creditor's right shall belong to the mortgagor, and the shortfall shall be paid by the debtor.

Article 414 — Where the same property is mortgaged to two or more creditors, the proceeds from the auction or sale of the mortgaged property shall be paid in accordance with the following provisions: (1) where the mortgages have been registered, the payment shall be made in the order of registration; (2) a registered mortgage shall have priority over an unregistered mortgage; and (3) where the mortgages have not been registered, the payment shall be made in proportion to the amount of the creditor's right. Where the provisions of the preceding paragraph cannot be followed, the payment may be made in accordance with the relevant provisions.

Article 415 — Where both a mortgage and a pledge exist on the same property, the sequence of payment of the proceeds from the auction or sale of the property shall be determined in the order of the time of registration and delivery.

Article 416 — Where a movable property is mortgaged to secure the payment of the purchase price and the mortgage is registered within 10 days after the delivery of the movable property, the mortgagee shall have priority in receiving payment over other security interest holders on the movable property, except for the lien holder.

Article 417 — Where the right to use land for construction is mortgaged, the buildings newly constructed on the land after the creation of the mortgage shall not be part of the mortgaged property. Where it is necessary to auction the right to use land for construction, the buildings newly constructed on the land may be auctioned together with the right to use land for construction, but the mortgagee shall not have the right to receive priority payment from the proceeds of the auction of the newly constructed buildings.

Article 418 — Where the right to use collectively owned land for construction is mortgaged in accordance with the provisions of law, the nature of the land ownership and the purpose of the land shall not be altered without statutory procedures after the realization of the mortgage, unless otherwise provided by law.

Article 419 — The mortgagee shall exercise the mortgage within the limitation period for the principal creditor's right; otherwise, the mortgage shall not be protected by the people's court.

Article 420 — Where a debtor or a third party provides the mortgaged property as security for the debts to be incurred continuously within a certain period, and the debtor fails to pay the debts when due or when the circumstances agreed upon by the parties for the realization of the mortgage arise, the mortgagee shall have the right to receive priority payment from the mortgaged property up to the maximum amount of the creditor's right. A creditor's right that exists before the creation of the maximum amount mortgage may, with the consent of the parties, be included in the scope of the creditor's right secured by the maximum amount mortgage.

Article 421 — Where part of the creditor's right is transferred before the maximum amount mortgage is determined, the maximum amount mortgage shall not be transferred, unless otherwise agreed upon by the parties.

Article 422 — Before the maximum amount mortgage is determined, the mortgagee and the mortgagor may agree to change the period for the determination of the creditor's right, the scope of the creditor's right, and the maximum amount of the creditor's right through agreement. However, the change shall not adversely

affect other mortgagees.

Article 423 — The creditor's right of a maximum amount mortgage shall be determined under any of the following circumstances: (1) the agreed period for the determination of the creditor's right has expired; (2) where there is no agreed period for the determination of the creditor's right or the agreement is unclear, the mortgagee or the mortgagor requests the determination of the creditor's right after two years have elapsed from the date of the creation of the maximum amount mortgage; (3) no new creditor's right can be incurred; (4) the mortgagee knows or ought to know that the mortgaged property has been sealed up or seized; or (5) the debtor or the mortgagor is declared bankrupt or dissolved.

Chapter XVIII — Pledge

Article 425 — Where a debtor or a third party transfers his movable property to the creditor for possession as security for the performance of an obligation, and the debtor fails to pay the debt when due or when the circumstances agreed upon by the parties for the realization of the pledge arise, the creditor shall have the right to receive priority payment from the movable property. The debtor or third party referred to in the preceding paragraph is the pledgor, the creditor is the pledgee, and the movable property delivered is the pledged property.

Article 426 — Movable property that is prohibited from being transferred by laws or administrative regulations shall not be pledged.

Article 427 — For the creation of a pledge, the parties shall enter into a written pledge contract. The pledge contract shall generally include the following terms: (1) the type and amount of the secured creditor's right; (2) the term for the debtor to perform the obligation; (3) the name, quantity, and other particulars of the pledged property; (4) the scope of the security; (5) the time and method of delivery of the pledged property; and (6) the method of dispute resolution.

Article 428 — Where the parties agree in the pledge contract that the ownership of the pledged property shall be transferred to the pledgee if the debtor fails to pay the debt when due, such agreement shall be void. However, the pledgee may receive priority payment from the pledged property in accordance with the law.

Article 429 — A pledge shall be created upon the delivery of the pledged property by the pledgor.

Article 430 — The pledgee shall have the right to collect the fruits of the pledged property, unless otherwise agreed upon in the contract. The fruits referred to in the preceding paragraph shall first be used to offset the expenses for collecting the fruits.

Article 431 — The pledgee shall not use or dispose of the pledged property without authorization during the period of the pledge; where the pledgee causes damage to the pledged property through unauthorized use or disposal, the pledgee shall be liable for compensation.

Article 432 — The pledgee shall have the obligation to properly keep the pledged property; where the pledged property is damaged or lost due to improper keeping, the pledgee shall be liable for compensation. Where the act of the pledgee may cause damage or loss to the pledged property, the pledgor may request the pledgee to submit the pledged property to a competent authority for depositing, or request the early performance of the debt and the return of the pledged property.

Article 433 — Where it is impossible to return the pledged property due to reasons not attributable to the pledgee, the pledgee may request the pledgor to provide corresponding security. Where the pledgor fails to provide such security, the pledgee may auction or sell the pledged property and, upon agreement with the pledgor, use the proceeds from the auction or sale to pay off the debt in advance or submit the proceeds to a competent authority for depositing.

Article 434 — Where the pledgee uses the pledged property without authorization or disposes of the pledged property without authorization during the validity period of the pledge, causing damage to the pledged

property, the pledgee shall be liable for compensation. Where the pledge is transferred without authorization and causes damage to the pledged property, the pledgee shall be liable for compensation.

Article 435 — The pledgee may waive the pledge. Where the debtor creates a pledge on his own property, and the pledgee waives the pledge, other security providers shall be exempted from the security liability to the extent that the pledgee has lost the right to receive priority payment, unless the other security providers continue to undertake to provide security.

Article 436 — Where the debtor performs the debt or the pledgor pays off the secured creditor's right in advance, the pledgee shall return the pledged property. Where the debtor fails to pay the debt when due or when the circumstances agreed upon by the parties for the realization of the pledge arise, the pledgee may agree with the pledgor to convert the pledged property into money or receive priority payment from the proceeds from the auction or sale of the pledged property. The pledged property shall be converted into money or sold at a price determined by reference to the market price.

Article 437 — Where the pledgor requests the pledgee to exercise the pledge in a timely manner after the expiration of the period for the performance of the debt, and the pledgee fails to exercise the pledge, the pledgor may request the people's court to auction or sell the pledged property. Where the pledgor requests the pledgee to exercise the pledge in a timely manner, and the delay in exercising the pledge causes damage to the pledgor, the pledgee shall be liable for compensation.

Article 438 — Where the pledged property is converted into money or sold, the part of the proceeds that exceeds the amount of the creditor's right shall belong to the pledgor, and the shortfall shall be paid by the debtor.

Article 439 — The pledgee shall exercise the pledge within the limitation period for the principal creditor's right; otherwise, the pledge shall not be protected by the people's court.

Article 440 — The following rights that a debtor or a third party has the right to dispose of may be pledged: (1) bills of exchange, promissory notes, and checks; (2) bonds and certificates of deposit; (3) warehouse receipts and bills of lading; (4) transferable fund units and shares; (5) transferable proprietary rights in intellectual property, such as the right to the exclusive use of a registered trademark, patent rights, and copyright; (6) existing and anticipated accounts receivable; and (7) other proprietary rights that may be pledged in accordance with the provisions of laws and administrative regulations.

Article 441 — For the pledge of a bill of exchange, promissory note, check, bond, certificate of deposit, warehouse receipt, or bill of lading, the pledge shall be created upon the delivery of the certificate of right to the pledgee; in the absence of a certificate of right, the pledge shall be created upon registration. Where the law provides otherwise, such provisions shall prevail.

Article 442 — Where the maturity date of a pledged bill of exchange, promissory note, check, bond, certificate of deposit, warehouse receipt, or bill of lading precedes the maturity date of the principal creditor's right, the pledgee may accept the payment and agree with the pledgor to use the payment to pay off the debt in advance or submit the payment to a competent authority for depositing.

Article 443 — For the pledge of fund units or shares, the pledge shall be created upon registration. The pledged fund units or shares shall not be transferred after the pledge, unless otherwise agreed upon by the pledgor and the pledgee through negotiation. The proceeds obtained by the pledgor from the transfer of fund units or shares shall be used to pay off the secured creditor's right to the pledgee in advance or submitted to a competent authority for depositing.

Article 444 — For the pledge of proprietary rights in intellectual property, such as the right to the exclusive use of a registered trademark, patent rights, and copyright, the pledge shall be created upon registration. The pledgor shall not transfer or permit another person to use the pledged intellectual property after the pledge, unless otherwise agreed upon by the pledgor and the pledgee through negotiation. The proceeds

obtained by the pledgor from the transfer or licensing of the pledged intellectual property shall be used to pay off the secured creditor's right to the pledgee in advance or submitted to a competent authority for depositing.

Article 445 — For the pledge of accounts receivable, the pledge shall be created upon registration. The pledged accounts receivable shall not be transferred after the pledge, unless otherwise agreed upon by the pledgor and the pledgee through negotiation. The proceeds obtained by the pledgor from the transfer of accounts receivable shall be used to pay off the secured creditor's right to the pledgee in advance or submitted to a competent authority for depositing.

Article 446 — The provisions of Section 1 of this Chapter shall apply mutatis mutandis to the pledge of rights, unless otherwise provided in this Section.

Chapter XIX — Lien

Article 447 — Where a debtor fails to pay a debt when due, the creditor may retain the debtor's movable property that the creditor has lawfully possessed and shall have the right to receive priority payment from the movable property. The creditor referred to in the preceding paragraph is the lien holder, and the movable property in his possession is the retained property.

Article 448 — The movable property retained by the creditor shall belong to the same legal relationship as the creditor's right, unless the lien holder and the debtor are both enterprises.

Article 449 — Movable property that is prohibited from being retained by law or agreed upon by the parties shall not be retained.

Article 450 — Where the retained property is divisible, the value of the retained property shall be equivalent to the amount of the debt.

Article 451 — The lien holder shall have the obligation to properly keep the retained property; where the retained property is damaged or lost due to improper keeping, the lien holder shall be liable for compensation.

Article 452 — The lien holder shall have the right to collect the fruits of the retained property. The fruits referred to in the preceding paragraph shall first be used to offset the expenses for collecting the fruits.

Article 453 — The lien holder and the debtor shall agree on the period for the performance of the debt after the property is retained; in the absence of an agreement or where the agreement is unclear, the lien holder shall give the debtor a period of not less than 60 days for the performance of the debt, unless the retained movable property is fresh, living, perishable, or difficult to keep. Where the debtor fails to perform the debt upon expiration of the period, the lien holder may agree with the debtor to convert the retained property into money or receive priority payment from the proceeds from the auction or sale of the retained property. The retained property shall be converted into money or sold at a price determined by reference to the market price.

Article 454 — The debtor may request the lien holder to exercise the lien after the expiration of the period for the performance of the debt; where the lien holder fails to exercise the lien, the debtor may request the people's court to auction or sell the retained property.

Article 455 — Where the retained property is converted into money, sold, or auctioned, the part of the proceeds that exceeds the amount of the creditor's right shall belong to the debtor, and the shortfall shall be paid by the debtor.

Article 456 — Where both a lien and a mortgage or pledge exist on the same movable property, the lien holder shall have priority in receiving payment.

Source: https://www.danyoungcpa.com/civil-code-book-2-property-rights-prc-2020-english-translation/

Article 457 — The lien shall be extinguished when the lien holder loses possession of the retained property or accepts other security provided by the debtor.

Chapter XX — Possession

Article 458 — Where possession of immovable or movable property is based on a contractual relationship or other relationship, the use, benefit, and liability for breach of contract with respect to the immovable or movable property shall be governed by the agreement; in the absence of an agreement or where the agreement is unclear, the relevant provisions of law shall apply.

Article 459 — Where a possessor uses the immovable or movable property in his possession and causes damage to the immovable or movable property, a mala fide possessor shall be liable for compensation.

Article 460 — Where immovable or movable property is in the possession of another person, the right holder may request the return of the original property and the fruits thereof; the expenses necessarily incurred by a bona fide possessor for the maintenance of the immovable or movable property shall be paid.

Article 461 — Where the immovable or movable property in the possession of another person is damaged or lost, and the right holder requests compensation, the possessor shall return the insurance money, compensation, or indemnity obtained as a result of the damage or loss to the right holder; where the right holder's damage has not been fully compensated and a mala fide possessor causes damage to the immovable or movable property, the mala fide possessor shall also compensate for the loss.

Article 462 — Where immovable or movable property in the possession of another person is encroached upon, the possessor shall have the right to request the return of the original property; where the possession is obstructed, the possessor shall have the right to request the removal of the obstruction or the elimination of the danger; where damage is caused by the encroachment or obstruction, the possessor shall have the right to request compensation for damage in accordance with the law. The right of claim of the possessor for the return of the original property shall be extinguished if not exercised within one year from the date of the encroachment.

Disclaimer: This English translation is provided for reference and informational purposes only. While every effort has been made to ensure accuracy, it is not an official translation and may contain errors or omissions. For legal purposes, the official Chinese text published by the National People's Congress of the People's Republic of China shall prevail. Dan Young Business Consultancy assumes no liability for any reliance placed on this translation. Users should consult qualified legal professionals for advice on specific legal matters.