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Property Law of the People's Republic of China [Effective]

中华人民共和国物权法 [现行有效]

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(No. 62)

The Property Law of the People's Republic of China, which was adopted at the 5th session of the Tenth National People's Congress on March 16, 2007, is hereby promulgated for effect as of October 1, 2007.

President of the People's Republic of China Hu Jintao
March 16, 2007

Property Law of the People's Republic of China
(Adopted at the 5th session of the Tenth National People's Congress on March 16, 2007)

中华人民共和国主席令
(第六十二号)

(相关资料:法律11篇行政法规4篇部门规章65篇司法解释21篇其他规范性文件5篇地方法规490篇案例6篇裁判文书1297篇条文释义相关论文1010篇)

《中华人民共和国物权法》已由中华人民共和国第十届全国人民代表大会第五次会议于2007年3月16日通过，现予公布，自2007年10月1日起施行。

中华人民共和国主席 胡锦涛

2007年3月16日

中华人民共和国物权法

(2007年3月16日第十届全国人民代表大会第五次会议通过)

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Part One General Provisions

Chapter I Basic Principles

Article 1 For the purpose of safeguarding the basic economic system of the state, maintaining the socialist market economic order, clarifying property ownerships, giving play to the utilities of properties and protecting the real right of the right holders, this Law has been formulated in accordance with the Constitution Law.

Article 2 This Law shall apply to the civil relationships generated from the ownership and utilization of properties.
The term "property" as mentioned in this Law includes real estates (immovable property) and movable property. In case other laws also stipulate certain rights to be the objects of real right, those provisions shall be followed.
The term 'real right' as mentioned in this Law refers to the exclusive right of direct control enjoyed by the holder according to law over a specific property, including ownership, usufructuary right and real rights for security.

Article 3 In the primary stage of socialism, the state upholds the basic economic system under which the public (state) ownership shall play a dominant role and diversified forms of ownerships may develop side by side.
The state consolidates and develops the public (state) economy, and encourages, supports and guides the development of the nonpublic economy.
The state practices the socialist market economy system and safeguards the equal legal status and development rights of all market operators.

Article 4 The real rights of the state, collectives, individuals or any other right holder shall be protected by law and shall not be infringed by any entities or individuals.

Article 5 The varieties and contents of real rights shall be stipulated by law.

Article 6 The creation, change, transfer or elimination of the real right of a real estate shall be registered according to law. The creation or transfer of the real right of a movable property shall be delivered according to law.

Article 7 In acquiring or exercising a real right, one shall abide by the law, respect social morals and may not damage the public interests or the legitimate rights and interests of any other person.

Article 8 Where there is any other special provision on real right in any other law, such special provision shall apply.

Chapter II Creation, Change, Transfer and Elimination of Real Right

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第一编 总则

第一章 基本原则

第一条 【立法目的及依据】为了维护国家基本经济制度，维护社会主义市场经济秩序，明确物的归属，发挥物的效用，保护权利人的物权，根据宪法，制定本法。
(相关资料:条文释义相关论文15篇)

第二条 【调整范围】因物的归属和利用而产生的民事关系，适用本法。
本法所称物，包括不动产和动产。法律规定权利作为物权客体的，依照其规定。
本法所称物权，是指权利人依法对特定的物享有直接支配和排他的权利，包括所有权、用益物权和担保物权。
(相关资料:裁判文书13篇条文释义相关论文28篇)

第三条 【基本经济制度与社会主义市场经济原则】国家在社会主义初级阶段，坚持公有制为主体、多种所有制经济共同发展的基本经济制度。
国家巩固和发展公有制经济，鼓励、支持和引导非公有制经济的发展。
国家实行社会主义市场经济，保障一切市场主体的平等法律地位和发展权利。
(相关资料:条文释义相关论文18篇)

第四条 【平等保护国家、集体和私人的物权】国家、集体、私人的物权和其他权利人的物权受法律保护，任何单位和个人不得侵犯。
(相关资料:司法解释1篇裁判文书54篇条文释义相关论文17篇)

第五条 【物权法定原则】物权的种类和内容，由法律规定。
(相关资料:裁判文书5篇条文释义相关论文24篇)

第六条 【物权公示原则】不动产物权的设立、变更、转让和消灭，应当依照法律规定登记。动产物权的设立和转让，应当依照法律规定交付。
(相关资料:裁判文书5篇条文释义相关论文22篇)

第七条 【取得和行使物权遵守法律、尊重社会公德原则】物权的取得和行使，应当遵守法律，尊重社会公德，不得损害公共利益和他人合法权益。
(相关资料:裁判文书7篇条文释义相关论文14篇)

第八条 【物权法与其他法律关系】其他相关法律对物权的另有特别规定的，依照其规定。
(相关资料:条文释义相关论文5篇)

第二章 物权的设立、变更、转让和消灭



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第一节 不动产登记

Article 9 The creation, change, transfer or elimination of the real right of a real property shall become effective after it is registered according to law; it shall have no effect if it is not registered according to law, except it is otherwise prescribed by any law.
The ownership of the natural resources which are owned by the state according to law are not required to be registered.

Article 10 The registration of a real property shall be executed by the registration organ of the place where the real property is located.
The state applies a uniform registration system over real properties. The scope, organ and measures of uniform registration shall be stipulated by the relevant laws and administrative regulations.

Article 11 An applicant for the registration of a real property shall, in light of the different registration items, provide the certificate of ownership of the real property and such required materials as the location and area of the real property.

Article 12 A registration organ shall perform the following duties:

- (1) Examining the certificate of ownership and other required materials submitted by the applicant;
- (2) Inquiring the applicant about the relevant registration items;
- (3) Registering the relevant items according to the facts and in a timely manner; and
- (4) Other duties prescribed in any law or administrative regulation.

Where it is necessary to further prove the relevant situation of the real property involved in the application for registration, the registration organ may require the applicant to submit additional materials and carry out on-the-spot inspection when necessary.

Article 13 No registration organ may conduct any of the following behaviors:

- (1) Demanding a piece of real property to be evaluated;
- (2) Making repeated registration in the name of annual inspection; or
- (3) Other behaviors conducted beyond its scope of registration duties.

Article 14 The creation, change, transfer or elimination of the real right of a real property shall, in case it shall be registered as required by law, become effective since the date when it is recorded in the real property register.

Article 15 A contract concluded by the parties concerned on the creation, change, transfer or elimination of the real right of a real property shall become effective upon the conclusion of the contract, except it is otherwise prescribed by any law; and whether the real right has been registered does not affect the validity of the contract.

Article 16 The real property register shall be the basis for determining the ownership and contents of a real property. Realty registers shall be managed by the registration organ.

Article 17 The real property ownership certificate shall be the proof on the holder's ownership of a real property. The items recorded in the real property ownership certificate shall be consistent with those recorded in the real property register; in case there is any inconsistency, the one recorded in the real property register shall prevail, except there is evidence to prove that it is wrong.

Article 18 Any right holder or interested party may apply for inquiring about or copying the registration materials, and the registration organ shall not refuse.

Article 19 Any right holder or interested party that believes that any item recorded in the real property registry is wrong may apply for correcting the registration. Where the right holder recorded in the real property registry agrees to revise the registration in written form or has evidence to prove that the

第九条 【不动产权登记生效以及所有权可不登记的规定】不动产权的设立、变更、转让和消灭，经依法登记，发生法律效力；未经登记，不发生法律效力，但法律另有规定的除外。
依法属于国家所有的自然资源，所有权可以不登记。
(相关资料:地方法规1篇裁判文书62篇条文释义相关论文47篇)

第十条 【不动产登记机构和全国统一登记制度】不动产登记，由不动产所在地的登记机构办理。
国家对不动产实行统一登记制度。统一登记的范围、登记机构和登记办法，由法律、行政法规规定。
(相关资料:司法解释1篇地方法规1篇裁判文书1篇条文释义相关论文19篇)

第十一条 【申请登记应提供的必要材料】当事人申请登记，应当根据不同登记事项提供权属证明和不动产界址、面积等必要材料。
(相关资料:裁判文书1篇条文释义相关论文4篇)

第十二条 【登记机构应当履行的职责】登记机构应当履行下列职责:

- (一) 查验申请人提供的权属证明和其他必要材料;
- (二) 就有关登记事项询问申请人;
- (三) 如实、及时登记有关事项;

(四) 法律、行政法规规定的其他职责。
申请登记的不动产的有关情况需要进一步证明的，登记机构可以要求申请人补充材料，必要时可以实地查看。
(相关资料:裁判文书3篇条文释义相关论文10篇)

第十三条 【登记机构禁止从事的行为】登记机构不得有下列行为:

- (一) 要求对不动产进行评估;
 - (二) 以年检等名义进行重复登记;
 - (三) 超出登记职责范围的其他行为。
- (相关资料:条文释义相关论文3篇)

第十四条 【登记效力】不动产权的设立、变更、转让和消灭，依照法律规定应当登记的，自记载于不动产登记簿时发生法律效力。
(相关资料:裁判文书18篇条文释义相关论文15篇)

第十五条 【合同效力和物权效力区分】当事人之间订立有关设立、变更、转让和消灭不动产权的合同，除法律另有规定或者合同另有约定外，自合同成立时生效；未办理物权登记的，不影响合同效力。
(相关资料:司法解释2篇案例1篇裁判文书41篇条文释义相关论文30篇)

第十六条 【不动产登记簿效力及其管理机构】不动产登记簿是物权归属和内容的根据。不动产登记簿由登记机构管理。
(相关资料:裁判文书8篇条文释义相关论文9篇)

第十七条 【不动产登记簿与不动产权属证书关系】不动产权属证书是权利人享有该不动产权的证明。不动产权属证书记载的事项，应当与不动产登记簿一致；记载不一致的，除有证据证明不动产登记簿确有错误外，以不动产登记簿为准。
(相关资料:裁判文书31篇条文释义相关论文14篇)

第十八条 【不动产登记资料查询、复制】权利人、利害关系人可以申请查询、复制登记资料，登记机构应当提供。
(相关资料:条文释义相关论文6篇)

第十九条 【不动产更正登记和异议登记】权利人、利害关系人认为不动产登记簿记载的事项错误的，可以申请更正登记。不动产登记簿记载的权利人书面同意更正或者有证



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registration is wrong, the registration organ shall revise the registration accordingly.

Where the right holder recorded in the real property registry does not agree to the change, the interested party may apply for dissidence registration. If the registration organ approves the dissidence registration but the applicant fails to bring an action within 15 days since the date of dissidence registration, the dissidence registration shall cease to be effective. If the dissidence registration is inappropriate and causes damages to the right holder, the holder may request the applicant to make compensation for damages.

Article 20 Where the parties concerned conclude a purchase agreement on a premise or the real right of any other real property, they may apply to the registration organ for advance notice registration to guarantee the realization of the real right in the future. After the advance notice registration, any disposal of the real property without obtaining the consent of the holder in the advance notice registration shall produce no effect of real right. If, after the advance notice registration is made, the obligee's right is eliminated or the application for the registration of the real property is not made within 3 months since the date when it can be registered, the advance notice registration shall cease to be effective.

Article 21 Any party concerned that provides false application materials for registration and causes damages to any other person shall undertake the liability for compensation. Where a registration organ causes damages to any other person because of any mistake in registration, it shall undertake the liability for compensation. After making the compensation, the registration organ may recover the amount from the person causing the registration error.

Article 22 Real property registration fees shall be collected on each piece, and may not be collected according to the size, volume or on the basis of certain proportion of the value of the real property. The specific charging rates shall be stipulated by the relevant departments under the State Council together with the competent department of pricing.

Section 2 Delivery of Movable Properties

Article 23 The creation or transfer of the real right of a movable property shall become effective upon delivery, except it is otherwise prescribed by any law.

Article 24 The creation, change, transfer or elimination of the real right of any vessel, aircraft or motor vehicle, etc, if it is not registered, may not challenge any bona fide third party.

Article 25 If, before the real right of a movable property is established or transferred, the right holder has legally possessed the movable property, the real right shall become effective upon the effectiveness of the legal act.

Article 26 If, before the real right of a movable property is established or transferred, a third party has legally possessed the movable property, the person bearing the obligation of delivery may request the third party to return the rights over the original object by means of transfer to substitutive delivery.

Article 27 If, when the real right of a movable property is transferred, both parties agree to let the transferor continue possessing the movable property, the real right shall become effective upon the effectiveness of the agreement.

Section 3 Other Provisions

Article 28 Where a real right is created, changed, transferred or eliminated for a legal document of the people's court or arbitration commission or a requisition decision of the people's government, etc, the real right shall become effective upon the effectiveness of the legal document or the requisition decision of the people's court.

Article 29 Where a real right is acquired through inheritance or bequest, it shall become effective since the beginning of the inheritance or bequest.

Article 30 Where a real right is created or eliminated for such factual behaviors as the legal construction or demolition of premises, it shall become effective upon the accomplishment of the factual behavior.

据证明登记确有错误的, 登记机构应当予以更正。

不动产登记簿记载的权利人不同意更正的, 利害关系人可以申请异议登记。登记机构予以异议登记的, 申请人在异议登记之日起十五日内不起诉, 异议登记失效。异议登记不当, 造成权利人损害的, 权利人可以向申请人请求损害赔偿。
(相关资料:裁判文书2篇条文释义相关论文27篇)

第二十条 【预告登记】当事人签订买卖房屋或者其他不动产物权的协议, 为保障将来实现物权, 按照约定可以向登记机构申请预告登记。预告登记后, 未经预告登记的权利人同意, 处分该不动产的, 不发生物权效力。预告登记后, 债权消灭或者自能够进行不动产登记之日起三个月内未申请登记的, 预告登记失效。
(相关资料:地方法规1篇裁判文书2篇条文释义相关论文23篇)

第二十一条 【登记错误赔偿责任】当事人提供虚假材料申请登记, 给他人造成损害的, 应当承担赔偿责任。因登记错误, 给他人造成损害的, 登记机构应当承担赔偿责任。登记机构赔偿后, 可以向造成登记错误的人追偿。
(相关资料:裁判文书1篇条文释义相关论文18篇)

第二十二条 【登记收费问题】不动产登记费按件收取, 不得按照不动产的面积、体积或者价款的比例收取。具体收费标准由国务院有关部门会同价格主管部门规定。
(相关资料:条文释义相关论文10篇)

第二节 动产交付

第二十三条 【动产物权的设立和转让生效时间】动产物权的设立和转让, 自交付时发生法律效力, 但法律另有规定的除外。
(相关资料:案例1篇裁判文书14篇条文释义相关论文23篇)

第二十四条 【船舶等物权登记】船舶、航空器和机动车等物权的设立、变更、转让和消灭, 未经登记, 不得对抗善意第三人。
(相关资料:裁判文书3篇条文释义相关论文20篇)

第二十五条 【动产物权受让人先行占有】动产物权设立和转让前, 权利人已经依法占有该动产的, 物权自法律行为生效时发生法律效力。
(相关资料:条文释义相关论文7篇)

第二十六条 【动产物权指示交付】动产物权设立和转让前, 第三人依法占有该动产的, 负有交付义务的人可以通过转让请求第三人返还原物的权利代替交付。
(相关资料:裁判文书1篇条文释义相关论文7篇)

第二十七条 【动产物权占有改定】动产物权转让时, 双方又约定由出让人继续占有该动产的, 物权自该约定生效时发生法律效力。
(相关资料:条文释义相关论文10篇)

第三节 其他规定

第二十八条 【特殊原因导致物权设立、变更、转让或者消灭的规定】因人民法院、仲裁委员会的法律文书或者人民政府的征收决定等, 导致物权设立、变更、转让或者消灭的, 自法律文书或者人民政府的征收决定等生效时发生法律效力。
(相关资料:地方法规1篇裁判文书13篇条文释义相关论文26篇)

第二十九条 【因继承或者受遗赠等而取得物权】因继承或者受遗赠取得物权的, 自继承或者受遗赠开始时发生法律效力。
(相关资料:裁判文书1篇条文释义相关论文8篇)

第三十条 【因事实行为而设立或者消灭物权】因合法建造、拆除房屋等事实行为设立或者消灭物权的, 自事实行为成就时发生法律效力。
(相关资料:地方法规1篇裁判文书10篇条文释义相关论文12篇)



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Article 31 As for a real right of real property enjoyed in accordance with the provisions of Articles 28 through 30 of this Law, any disposal of the real right shall produce no effect of real right if it is not registered as required by law.

Chapter III Protection of Real Right

Article 32 In case a real right is injured, the right holder may solve the problem through such channels as conciliation, mediation or arbitration, etc.

Article 33 As for a dispute over the ownership or content of real right, the interested parties may petition for confirming the right.

Article 34 As for the untitle possession of a real property or movable property, the right holder may petition for returning the original object.

Article 35 Where a real right has been or may be obstructed, the right holder may petition for removing the impediment or eliminating the danger.

Article 36 Where a real property or movable property is damaged, the right holder may petition for repairing, remaking, changing or restoring the original state.

Article 37 Where a real right is injured and the right holder suffers losses from it, the right holder may petition for the compensation for the losses or the undertaking of any other civil liability.

Article 38 The ways for the protection of real right as stipulated in this Law may apply either independently or by combining with each other in light of the specific circumstance of an injury of real right. In addition to undertaking civil liabilities, any entity or individual injuring a real right shall undertake the administrative liabilities in case any provision on administrative regulation is violated; if any crime is constituted, he shall be subject to the criminal liabilities.

Part Two Ownership

Chapter IV General Provisions

Article 39 The owner of a real property or movable property has the rights to possess, use, seek profits from and dispose of the real property or movable property according to law.

Article 40 The owner of a real property or movable property has the right to establish a usufructuary right or real right for security over the real property or movable property. When exercising the right, the holder of usufructuary right or the holder of real right for security may not damage the rights and interests of the owner.

Article 41 As for a real property or movable property exclusively owned by the state as prescribed by law, no entity or individual may acquire its ownership.

Article 42 To meet the needs of public interests, collectively-owned lands, premises owned by entities and individuals or other real properties may be expropriated in accordance with the power scope and procedures provided by laws.

As for the expropriation of collectively-owned land, it is necessary to, according to law and in full amount, pay such fees as land compensation fees, placement subsidies, compensations for the above-ground fixtures of the lands and seedlings, arrange for social security fees for the farmers whose land is expropriated, secure their livelihood and safeguard their legitimate rights and interests.

As for the expropriation of the premises owned by entities and individuals or other real properties, it is necessary to make compensation for demolition and relocation according to law and safeguard the legitimate rights and interests of the owners of the real properties expropriated; as for the expropriation of the individuals' residential houses, it is necessary to safeguard the housing conditions of the owners of the houses expropriated.

第三十一条 【非依法行为享有的不动产物权变动】依照本法第二十八条至第三十条规定享有不动产物权的，处分该物权时，依照法律规定需要办理登记的，未经登记，不发生物权效力。

（相关资料:裁判文书4篇条文释义相关论文12篇）

第三章 物权的保护

第三十二条 【物权保护诉讼程序】物权受到侵害的，权利人可以通过和解、调解、仲裁、诉讼等途径解决。

（相关资料:裁判文书15篇条文释义相关论文8篇）

第三十三条 【物权确认请求权】因物权的归属、内容发生争议的，利害关系人可以请求确认权利。

（相关资料:裁判文书43篇条文释义相关论文8篇）

第三十四条 【返还原物请求权】无权占有不动产或者动产的，权利人可以请求返还原物。

（相关资料:裁判文书75篇条文释义相关论文14篇）

第三十五条 【排除妨害、清除危险请求权】妨害物权或者可能妨害物权的，权利人可以请求排除妨害或者消除危险。

（相关资料:裁判文书52篇条文释义相关论文9篇）

第三十六条 【修理、重作、更换或者恢复原状请求权】造成不动产或者动产毁损的，权利人可以请求修理、重作、更换或者恢复原状。

（相关资料:裁判文书11篇条文释义相关论文6篇）

第三十七条 【损害赔偿和其他民事责任请求权】侵害物权，造成权利人损害的，权利人可以请求损害赔偿，也可以请求承担其他民事责任。

（相关资料:裁判文书46篇条文释义相关论文8篇）

第三十八条 【特权保护方式的单用和并用以及三大法律责任的适用】本章规定的物权保护方式，可以单独适用，也可以根据权利被侵害的情形合并适用。

侵害物权，除承担民事责任外，违反行政管理规定的，依法承担行政责任；构成犯罪的，依法追究刑事责任。

（相关资料:裁判文书1篇条文释义相关论文6篇）

第二编 所有权

第四章 一般规定

第三十九条 【所有权基本内容】所有权人对自己的不动产或者动产，依法享有占有、使用、收益和处分的权利。

（相关资料:裁判文书60篇条文释义相关论文11篇）

第四十条 【所有权人设定他物权】所有权人有权在自己的不动产或者动产上设立用益物权和担保物权。用益物权人、担保物权人行使权利，不得损害所有权人的权益。

（相关资料:裁判文书2篇条文释义相关论文5篇）

第四十一条 【国家专有】法律规定专属于国家所有的不动产和动产，任何单位和个人不能取得所有权。

（相关资料:裁判文书11篇条文释义相关论文8篇）

第四十二条 【征收】为了公共利益的需要，依照法律规定的权限和程序可以征收集体所有的土地和单位、个人的房屋及其他不动产。

征收集体所有的土地，应当依法足额支付土地补偿费、补助费、地上附着物和青苗的补偿费等费用，安排被征地农民的社会保障费用，保障被征地农民的生活，维护被征地农民的合法权益。

征收单位、个人的房屋及其他不动产，应当依法给予拆迁补偿，维护被征收人的合法权益；征收个人住宅的，还应当保障被征收人的居住条件。

任何单位和个人不得贪污、挪用、私分、截留、拖欠征收补偿费等费用。



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No entity or individual may embezzle, misappropriate, privately share, detain or delay in the payment of the compensation fees for expropriation.

Article 43 The state provides special protection for farm lands, strictly restricts the conversion of farm lands into lands for construction and controls the aggregate quantity of lands for construction. No one may requisition any collectively-owned land by violating the statutory power limit and procedures.

Article 44 In case of the needs of emergent dangers or disasters, it is allowed for one to use the real properties or movable properties of entities and individuals in accordance with the statutory power limit and procedures. These real properties or movable properties shall be returned to the owners after the emergent use. Where any real property or movable property of any entity or individual is used or damaged or lost after it is used, corresponding compensation shall be made.

Chapter V State Ownership, Collective Ownership and Private Ownership

Article 45 The properties that shall be owned by the state as prescribed by law belong to the state or all the people as a whole. The ownership of state-owned properties shall be exercised by the State Council on behalf of the state; where there is any other provision in any law, this provision shall prevail.

Article 46 Mineral deposits, waters and sea areas shall be owned by the state.

Article 47 Urban lands shall be owned by the state. Lands in the rural areas and suburban areas that shall be owned by the state as prescribed by law belong to the state.

Article 48 Natural resources such as forests, mountains, grasslands, waste lands and tidal flats shall be owned by the state, except those that shall be collectively owned as prescribed by law.

Article 49 The wildlife resources that shall be owned by the state as prescribed by law shall be owned by the state.

Article 50 Radio frequency spectrum resources shall be owned by the state.

Article 51 The cultural relics that shall be owned by the state as prescribed by law belong to the state.

Article 52 Assets of national defense shall be owned by the state. Infrastructures such as railways, highways, electric power facilities, telecommunication facilities, and petrol and gas pipelines that shall be owned by the state as prescribed by law belong to the state.

Article 53 State organs have the right to possess, use and dispose of any real property or movable property directly controlled by them in accordance with the laws and the relevant provisions of the State Council.

Article 54 The public institutions held by the state have the right to possess, use, seek profits from and dispose of any real property or movable property directly under their control in accordance with the laws and the relevant provisions of the State Council.

Article 55 As for the enterprises established with the funds contributed by the state, the State Council and the local people's governments shall, in accordance with the relevant laws and administrative regulations, perform the contributor's duties and enjoy the contributor's rights and interests on behalf of the state.

Article 56 The properties owned by the state shall be under the protection of law, and no entity or individual may embezzle, loot, privately divide, retain or destroy them.

(相关资料:地方法规1篇裁判文书5篇条文释义相关论文59篇)

第四十三条 【保护耕地、禁止违法征地】国家对耕地实行特殊保护,严格限制农用地转为建设用地,控制建设用地总量。不得违反法律规定的权限和程序征收集体所有的土地。
(相关资料:条文释义相关论文10篇)

第四十四条 【征用】因抢险、救灾等紧急需要,依照法律规定的权限和程序可以征用单位、个人的不动产或者动产。被征用的不动产或者动产使用后,应当返还被征用人。单位、个人的不动产或者动产被征用或者征用后毁损、灭失的,应当给予补偿。
(相关资料:条文释义相关论文15篇)

第五章 国家所有权和集体所有权、私人所有权

第四十五条 【国有财产范围、国家所有的性质和国家所有权行使】法律规定属于国家所有的财产,属于国家所有即全民所有。国有财产由国务院代表国家行使所有权;法律另有规定的,依照其规定。
(相关资料:条文释义相关论文10篇)

第四十六条 【矿藏、水流、海域的国家所有权】矿藏、水流、海域属于国家所有。
(相关资料:部门规章1篇条文释义相关论文9篇)

第四十七条 【国家所有土地范围】城市的土地,属于国家所有。法律规定属于国家所有的农村和城市郊区的土地,属于国家所有。
(相关资料:裁判文书1篇条文释义相关论文5篇)

第四十八条 【属于国家所有的自然资源】森林、山岭、草原、荒地、滩涂等自然资源,属于国家所有,但法律规定属于集体所有的除外。
(相关资料:条文释义相关论文9篇)

第四十九条 【野生动植物资源的国家所有权】法律规定属于国家所有的野生动植物资源,属于国家所有。
(相关资料:条文释义相关论文10篇)

第五十条 【无线电频谱资源的国家所有权】无线电频谱资源属于国家所有。
(相关资料:条文释义相关论文2篇)

第五十一条 【属于国家所有的文物】法律规定属于国家所有的文物,属于国家所有。
(相关资料:条文释义相关论文3篇)

第五十二条 【属于国家所有的资产和基础设施】国防资产属于国家所有。铁路、公路、电力设施、电信设施和油气管道等基础设施,依照法律规定为国家所有的,属于国家所有。
(相关资料:条文释义相关论文3篇)

第五十三条 【国家机关的物权】国家机关对其直接支配的不动产和动产,享有占有、使用以及依照法律和国务院的有关规定处分的权利。
(相关资料:条文释义相关论文6篇)

第五十四条 【国家举办的事业单位的物权】国家举办的事业单位对其直接支配的不动产和动产,享有占有、使用以及依照法律和国务院的有关规定收益、处分的权利。
(相关资料:条文释义相关论文6篇)

第五十五条 【国有出资的企业出资人制度】国家出资的企业,由国务院、地方人民政府依照法律、行政法规规定分别代表国家履行出资人职责,享有出资人权益。
(相关资料:裁判文书1篇条文释义相关论文7篇)

第五十六条 【国有财产保护】国家所有的财产受法律保护,禁止任何单位和个人侵占、哄抢、私分、截留、破坏。
(相关资料:条文释义相关论文7篇)



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Article 57 The institutions and their staff that perform the duties of managing and supervising state-owned assets shall make more efforts in the management and supervision of state-owned assets according to law so as to promote the value maintenance and appreciation of state-owned assets and prevent the losses of state-owned assets; any entity or individual causing any loss of state-owned assets for the misuse of authority or neglect of duty shall undertake legal responsibilities according to law.

Any entity or individual violating the provisions on the management of state-owned assets and causing losses of state-owned assets in the process of enterprise restructuring, merger, division or affiliated transactions by way of transferring at a low price, conspiring to distribute them secretly, providing guarantee with them without authorization or any other way shall undertake legal responsibilities according to law.

Article 58 The collectively-owned real properties and movable properties shall include:

- (1) Lands, forests, mountains, grasslands, unclaimed lands and tidal flats that shall be collectively owned as prescribed by law;
- (2) Collectively-owned buildings, production facilities, farmland, and water conservancy facilities;
- (3) Collectively-owned facilities for education, science, culture, sanitation and sports, etc;
- (4) Other collectively-owned real properties and movable properties.

Article 59 The real properties and movable properties owned by a farmers' collective shall be collectively owned by all the members of the collective.

The following items shall be decided by the members of the collective in accordance with the statutory procedures:

- (1) Land contracting plan and whether to give out a land contract to an entity or individual other than those of the collective;
- (2) Adjustment of the contracted lands among the holders of the right to the contracted management of land;
- (3) Methods for the use and distribution of such fees as land compensation fees;
- (4) The change of ownership or any other relevant issue of an enterprise established with the funds contributed by the collective;
- (5) Other items prescribed by any law.

Article 60 The ownership of a collectively-owned land, forest, mountain, grassland, unclaimed land or tidal flat shall be exercised in accordance with the following provisions:

- (1) If it is owned by a farmers' collective of a village, the ownership shall be exercised by a collective economic organization or the villagers' committee of the village on behalf of the collective;
- (2) If it is owned by two or more farmers' collectives, the ownership shall be exercised by all the collective economic organizations or the villagers' groups of the village on behalf of the collective; and
- (3) If it is owned by a farmers' collective of a town, the ownership shall be exercised by a collective economic organization of the town on behalf of the collective.

Article 61 An urban collective has the rights to possess, use, seek profits from and dispose of any real property or movable property it owns in accordance with the relevant laws and administrative regulations.

Article 62 The collective economic organization, villager's committee or villagers' group shall publicize the status of the properties owned by a collective to the members of the collective in accordance with the relevant laws, administrative regulations, articles of association and village regulations and villagers' pledges.

Article 63 Collectively-owned properties shall be under the protection of law, and no entity or individual may embezzle, loot, privately divide, retain, or destroy them.

If a decision made by a collective economic organization, villagers' committee or the person in charge infringes upon the legitimate rights and interests of any member of the collective, the infringed member of the collective may petition the people's court to withdraw the decision.

Article 64 An individual is entitled to the ownership of his legal income, premise, household goods, instruments of production, raw materials and other real properties and movable properties.

第五十七条 【国有财产管理法律责任】履行国有财产管理、监督职责的机构及其工作人员，应当依法加强对国有财产的管理、监督，促进国有财产保值增值，防止国有财产损失；滥用职权，玩忽职守，造成国有财产损失的，应当依法承担法律责任。

违反国有财产管理规定，在企业改制、合并分立、关联交易等过程中，低价转让、合谋私分、擅自担保或者以其他方式造成国有财产损失的，应当依法承担法律责任。

(相关资料:条文释义相关论文9篇)

第五十八条 【集体财产范围】集体所有的不动产和动产包括：

- (一) 法律规定属于集体所有的土地和森林、山岭、草原、荒地、滩涂；
- (二) 集体所有的建筑物、生产设施、农田水利设施；
- (三) 集体所有的教育、科学、文化、卫生、体育等设施；
- (四) 集体所有的其他不动产和动产。

(相关资料:裁判文书9篇条文释义相关论文6篇)

第五十九条 【农民集体所有财产归属以及重大事项集体决定】农民集体所有的不动产和动产，属于本集体成员集体所有。

下列事项应当依照法定程序经本集体成员决定：

- (一) 土地承包方案以及将土地发包给本集体以外的单位或者个人承包；
- (二) 个别土地承包经营权人之间承包地的调整；
- (三) 土地补偿费等费用的使用、分配办法；
- (四) 集体出资的企业的所有权变动等事项；
- (五) 规定的其他事项。

(相关资料:裁判文书57篇条文释义相关论文10篇)

第六十条 【农民集体所有权的行使】对于集体所有的土地和森林、山岭、草原、荒地、滩涂等，依照下列规定行使所有权：

- (一) 属于村农民集体所有的，由村集体经济组织或者村民委员会代表集体行使所有权；
- (二) 分别属于村内两个以上农民集体所有的，由村内各该集体经济组织或者村民小组代表集体行使所有权；

(三) 属于乡镇农民集体所有的，由乡镇集体经济组织代表集体行使所有权。

(相关资料:地方法规1篇裁判文书12篇条文释义相关论文5篇)

第六十一条 【城镇集体财产权利】城镇集体所有的不动产和动产，依照法律、行政法规的规定由本集体享有占有、使用、收益和处分的权利。

(相关资料:条文释义相关论文2篇)

第六十二条 【公布集体财产状况】集体经济组织或者村民委员会、村民小组应当依照法律、行政法规以及章程、村规民约向本集体成员公布集体财产的状况。

(相关资料:条文释义相关论文5篇)

第六十三条 【集体财产权保护】集体所有的财产受法律保护，禁止任何单位和个人侵占、哄抢、私分、破坏。

集体经济组织、村民委员会或者其负责人作出的决定侵害集体成员合法权益的，受侵害的集体成员可以请求人民法院予以撤销。

(相关资料:裁判文书49篇条文释义相关论文7篇)

第六十四条 【私有财产范围】私人对其合法的收入、房屋、生活用品、生产工具、原材料等不动产和动产享有所有权。

(相关资料:裁判文书14篇条文释义相关论文5篇)



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Article 65 The legal savings, investments and the corresponding proceeds of an individual shall be under the protection of law.

The state shall protect an individual's right of inheritance and other legal rights and interests according to law.

Article 66 An individual's legal property shall be under the protection of law, no entity or individual may encroach, plunder or destroy it.

Article 67 The state, any collective or individual may contribute funds to establish a limited liability company, a company limited by shares or any other enterprise. Where the real properties or movable properties owned by the state, a collective or an individual are invested in an enterprise, the contributor shall enjoy such rights as obtaining asset returns, making important decisions and selecting operators and managers and perform their duties in accordance with the agreement or on the basis of his proportion of investment.

Article 68 An enterprise legal person has the right to possess, use, seek profits from and dispose of any real property or movable property it owns in accordance with the laws, administrative regulations and its articles of association.

The rights of a legal person other than an enterprise legal person over the real properties and movable properties it owns shall be governed by the provisions of the relevant laws, administrative regulations and its articles of associations.

Article 69 The real properties and movable properties owned by social organizations according to law shall be under the protection of law.

Chapter VI Owners' Partitioned Ownership of Building Areas (Owners' Condominium Rights)

Article 70 An owner shall have ownership over the exclusive parts within the buildings, such as the residential houses or the houses used for business purposes, and shall have common ownership and the right of common management over the common parts other than the exclusive parts.

Article 71 An owner has the rights to possess, use, seek profits from and dispose of the exclusive parts of the building. No owner may, when exercising his or its rights, endanger the safety of the building or damage the legitimate rights and interests of any other owner.

Article 72 An owner enjoys the rights and undertakes the obligations over the common parts other than the exclusive parts of the building, and may not refuse to fulfill the obligations under the pretext of waiver of rights.

Where an owner transfers his residential house or the house used for business purposes within the building, the common ownership and the right to common management he/she is entitled to over the common parts shall be transferred concurrently.

Article 73 The roads within the building zone (or community) shall be commonly owned by the owners, except the public roads of cities and towns. The green lands within the building area shall be commonly owned by all the owners, except the public green lands of cities and towns or those which are expressly ascribed to individuals. The other public places, common facilities and houses used for real property services within the building zone shall be commonly owned by all the owners.

Article 74 The parking spaces and garages that are within the building area and planned for parking cars shall be used to satisfy, above all else, the needs of the owners.

The ownership of the parking spaces and garages shall be stipulated by the parties concerned by way of selling, complementary using or leasing, etc.

The parking spaces occupying the roads or other fields commonly owned by all owners shall belong to all the owners.

Article 75 The owners may establish an owners' assembly and select an owners' committee.

The relevant departments of the local people's governments shall provide guidance and assistance for the establishment of the owners' assembly and the selection of the owners' committee.

Article 76 The following issues shall be commonly decided by all owners:

- (1) Formulating or amending the rules of procedure for the owners' assembly;
- (2) Formulating or amending the stipulations on the management of the building and its affiliated facilities;

第六十五条 【保护私人合法权益】私人合法的储蓄、投资及其收益受法律保护。

国家依照法律规定保护私人的继承权及其他合法权益。
(相关资料:裁判文书1篇条文释义相关论文4篇)

第六十六条 【私有财产保护】私人的合法财产受法律保护,禁止任何单位和个人侵占、哄抢、破坏。

(相关资料:裁判文书21篇条文释义相关论文3篇)

第六十七条 【企业出资人权利】国家、集体和私人依法可以出资设立有限责任公司、股份有限公司或者其他企业。国家、集体和私人所有的不动产或者动产,投入到企业的,由出资人按照约定或者出资比例享有资产收益、重大决策以及选择经营管理者等权利并履行义务。

(相关资料:条文释义相关论文6篇)

第六十八条 【法人财产权】企业法人对其不动产和动产依照法律、行政法规以及章程享有占有、使用、收益和处分的权利。

企业法人以外的法人,对其不动产和动产的权利,适用有关法律、行政法规以及章程的规定。

(相关资料:裁判文书4篇条文释义相关论文14篇)

第六十九条 【保护社会团体财产】社会团体依法所有的不动产和动产,受法律保护。

(相关资料:条文释义相关论文2篇)

第六章 业主的建筑物区分所有权

第七十条 【对建筑物区分所有权】业主对建筑物内的住宅、经营性用房等专有部分享有所有权,对专有部分以外的共有部分享有共有和共同管理的权利。

(相关资料:裁判文书12篇条文释义相关论文13篇)

第七十一条 【业主对专有部分行使所有权】业主对其建筑物专有部分享有占有、使用、收益和处分的权利。业主行使权利不得危及建筑物的安全,不得损害其他业主的合法权益。

(相关资料:司法解释1篇裁判文书5篇条文释义相关论文6篇)

第七十二条 【业主对共有部分的权利义务】业主对建筑物专有部分以外的共有部分,享有权利,承担义务;不得以放弃权利不履行义务。

业主转让建筑物内的住宅、经营性用房,其对共有部分享有的共有和共同管理的权利一并转让。

(相关资料:案例1篇裁判文书9篇条文释义相关论文9篇)

第七十三条 【建筑区划内的场所归属】建筑区划内的道路,属于业主共有,但属于城镇公共道路的除外。建筑区划内的绿地,属于业主共有,但属于城镇公共绿地或者明示属于个人的除外。建筑区划内的其他公共场所、公用设施和物业服务用房,属于业主共有。

(相关资料:裁判文书1篇条文释义相关论文11篇)

第七十四条 【车位、车库的规定】建筑区划内,规划用于停放汽车的车位、车库应当首先满足业主的需要。建筑区划内,规划用于停放汽车的车位、车库的归属,由当事人通过出售、附赠或者出租等方式约定。

占用业主共有的道路或者其他场地用于停放汽车的车位,属于业主共有。

(相关资料:司法解释1篇地方法规1篇裁判文书2篇条文释义相关论文19篇)

第七十五条 【业主大会、业主委员会设立】业主应当设立业主大会,选举业主委员会。

地方人民政府有关部门应当对设立业主大会和选举业主委员会给予指导和协助。

(相关资料:裁判文书2篇条文释义相关论文5篇)

第七十六条 【业主决定建筑区划内重大事项及表决权】下列事项由业主共同决定:

- (一) 制定和修改业主大会议事规则;
- (二) 制定和修改建筑物及其附属设施的管理规约;



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- (3) Selecting the owners' committee or changing the members of the owners' committee;
- (4) Selecting or dismissing the real property service enterprise or any other manager;
- (5) Raising or using the funds for the maintenance of the building and its affiliated facilities;
- (6) Rebuilding the building or any of its affiliated facilities;
- (7) Other important issues concerning the common ownership and the right to common management.
- The decisions related to the issues prescribed in Item (5) or Item (6) of the preceding paragraph shall be made by the owners who exclusively own 2/3 or more of the total area of the building and who account for 2/3 or more of the total number of the owners. On the decisions related to any other issue prescribed in the preceding paragraph shall be made by the owners who exclusively own half of the total area of the building and who account for half of the total number of the owners.

Article 77 No owner may change a residential house into a house used for business purposes by violating any law, regulation or stipulation on building management. When changing a residential house into a house used for business purposes, the owner shall, in addition to observing laws, regulations and stipulations on building management, obtain the consent of all the other owners who have interests in the change.

Article 78 The decision made by an owners' assembly or an owners' committee is binding to all the owners.

Where any decision made by the owners' assembly or the owners' committee has infringed upon the legitimate rights and interests of an owner, such an owner may petition the people's court for withdrawing the decision.

Article 79 The funds for the maintenance of a building and its affiliated facilities shall be commonly owned by the owners of the building. The funds may be used for the maintenance of such common facilities as elevators and water tanks as codetermined by the owners. The information regarding the raise and use of the maintenance funds shall be published to all the owners.

Article 80 As for such issues as the allocation of the expenses spent for and the distribution of the income obtained from a building or any of its affiliated facilities, where there is any stipulation on it, this stipulation shall apply; where there is no stipulation on it or the stipulation is not clear, these issues shall be determined on the basis of the proportion of each owner's exclusive parts to the total area of the building.

Article 81 The owners of a building may manage the building and its affiliated facilities by themselves or by entrusting a real property service enterprise or any other management personnel. The owners are entitled to change the real property service enterprise or any other management personnel hired by the construction entity according to law.

Article 82 The real property service enterprise or any other management personnel shall manage the building and its affiliated facilities within the building area upon the entrustment of the owners and be subject to the supervision of the owners.

Article 83 The owners shall abide by the laws, regulations and management stipulations. As for an act injuring the legitimate rights and interests of other persons, such as discarding wastes at will, discharging atmospheric pollutants and noise, breeding animals by violating the relevant regulations, illegally building shelters, occupying passages or refusing to pay real property management fees, etc, the owners' assembly and the owners' committee are entitled to request the actor to cease the infringing act, eliminate the danger, remove the impediments and make compensation for the losses in accordance with the relevant laws, regulations and stipulations on management. An owner may bring a lawsuit to the people's court according to law in case there is any infringement upon his legitimate rights and interests.

Chapter VII Relationships of Adjacency

Article 84 Right holders who are adjacent to one another on a real property shall correctly handle the relationship of adjacency in accordance with the principles of facilitating production, making things convenient in life, showing unity and providing mutual assistance, and fairness and equity.

- (三) 选举业主委员会或者更换业主委员会成员;
- (四) 选聘和解聘物业服务企业或者其他管理人;
- (五) 筹集和使用建筑物及其附属设施的维修资金;
- (六) 改建、重建建筑物及其附属设施;
- (七) 有关共有和共同管理权利的其他重大事项。

决定前款第五项和第六项规定的事项,应当经专有部分占建筑物总面积三分之二的业主且占总人数三分之二的业主同意。决定前款其他事项,应当经专有部分占建筑物总面积过半数的业主且占总人数过半数的业主同意。

(相关资料:司法解释2篇地方法规2篇裁判文书12篇条文释义相关论文17篇)

第七十七条 【将住宅改变为经营性用房的規定】 业主不得违反法律、法规以及管理规约,将住宅改变为经营性用房。业主将住宅改变为经营性用房的,除遵守法律、法规以及管理规约外,应当经利害关系业主同意。

(相关资料:部门规章1篇司法解释1篇地方法规1篇裁判文书1篇条文释义相关论文5篇)

第七十八条 【业主大会、业主委员会决定效力】 业主大会或者业主委员会的决定,对业主具有约束力。

业主大会或者业主委员会作出的决定侵害业主合法权益的,受侵害的业主可以请求人民法院予以撤销。

(相关资料:司法解释1篇裁判文书9篇条文释义相关论文12篇)

第七十九条 【建筑物及其附属设施的维修基金的归属、用途以及筹集与使用】 建筑物及其附属设施的维修资金,属于业主共有。经业主共同决定,可以用于电梯、水箱等共有部分的维修。维修资金的筹集、使用情况应当公布。

(相关资料:条文释义相关论文4篇)

第八十条 【建筑物及其附属设施的费用分摊、收益分配】 建筑物及其附属设施的费用分摊、收益分配等事项,有约定的,按照约定;没有约定或者约定不明确的,按照业主专有部分占建筑物总面积的比例确定。

(相关资料:司法解释1篇地方法规1篇条文释义相关论文5篇)

第八十一条 【建筑物及其附属设施的管理】 业主可以自行管理建筑物及其附属设施,也可以委托物业服务企业或者其他管理人管理。

对建设单位聘请的物业服务企业或者其他管理人,业主有权依法更换。

(相关资料:司法解释1篇裁判文书6篇条文释义相关论文8篇)

第八十二条 【物业服务企业或者其他管理人与业主关系】 物业服务企业或者其他管理人根据业主的委托管理建筑区划内的建筑物及其附属设施,并接受业主的监督。

(相关资料:司法解释1篇裁判文书1篇条文释义相关论文3篇)

第八十三条 【业主义务】 业主应当遵守法律、法规以及管理规约。

业主大会和业主委员会,对任意弃置垃圾、排放污染物或者噪声、违反规定饲养动物、违章搭建、侵占通道、拒付物业费等行为,有权依照法律、法规以及管理规约,要求行为人停止侵害、消除危险、排除妨害、赔偿损失。业主对侵害自己合法权益的行为,可以依法向人民法院提起诉讼。

(相关资料:司法解释1篇裁判文书11篇条文释义相关论文10篇)

第七章 相邻关系

第八十四条 【处理相邻关系的原則】 不动产的相邻权利人应当按照有利生产、方便生活、团结互助、公平合理的原则,正确处理相邻关系。

(相关资料:地方法规1篇裁判文书60篇条文释义相关论文5篇)



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Article 85 Where there is any provision on the handling of contiguous relationship, such provision shall apply; where there isn't any provision on it, the contiguous relationship shall be handled in light of the local customs.

Article 86 The holder of a real property shall provide necessary convenience for the use of water and drainage of the adjacent right holders. The utilization of natural running water shall be rationally distributed to the adjacent right holders of a real property. As for the drainage of natural running water, the natural current direction shall be respected.

Article 87 The right holder of a real property shall provide necessary convenience in case a adjacent right holder has to use his land because of passage or any other reason.

Article 88 Where the right holder of a real property has to use a adjacent land or building for such reasons as constructing or repairing a building, or laying wires, cables, water pipes, heating pipelines or fuel gas pipelines, etc, the right holder of the land or building shall provide necessary convenience.

Article 89 As for the construction of a building, no entity or individual may violate the relevant engineering construction standards of the state or block the ventilation, lighting or sunshine of any adjacent building.

Article 90 An holder of real property may not discard solid wastes or discharge atmospheric pollutants, water pollutants, or such harmful substances as noise, light and magnetic radiation by violating the relevant provisions of the state.

Article 91 When excavating a land, constructing a building, laying a pipeline or installing an equipment, the right holder of the real property may not endanger the safety of any adjacent real property.

Article 92 In case the right holder of a real property has to use a adjacent real property for reasons of using water, drainage, passage or laying pipelines, etc, he shall do his best to avoid causing any damage to the right holder of the adjacent real property; if any damage is caused, he shall make corresponding compensations.

Chapter VIII Common Ownership

Article 93 A real property or movable property may be commonly owned by two or more entities or individuals. Common ownership includes several co-ownership and joint ownership.

Article 94 A several co-owner of a commonly owned real property or movable property shall enjoy the ownership of the real property or movable property according to his shares.

Article 95 A joint owner of a commonly owned real property or movable property shall enjoy the ownership of the real property or movable property on a common basis.

Article 96 The co-owners of a commonly owned real property or movable property shall manage the real property or movable property as stipulated; where it is not stipulated or clearly stipulated, all co-owners have the right and obligation of management.

Article 97 As for the disposal or major repair of a commonly owned real property or movable property, the consent of the several co-owners possessing 2/3 of the shares or all joint owners shall be obtained, except it is stipulated otherwise by the co-owners.

Article 98 As for the management expenses or any other liabilities of a commonly owned property, if there is any stipulation on it, such stipulation shall apply; if there isn't any stipulation on it or the stipulation is not clear, the expenses shall be borne by the several co-owners on the basis of their respective shares or commonly borne by all joint owners.

第八十五条 【处理相邻关系的依据】法律、法规对处理相邻关系有规定的，依照其规定；法律、法规没有规定的，可以按照当地习惯。
(相关资料:裁判文书5篇条文释义相关论文7篇)

第八十六条 【用水、排水相邻关系】不动产权利人应当为相邻权利人用水、排水提供必要的便利。对自然流水的利用，应当在不动产的相邻权利人之间合理分配。对自然流水的排放，应当尊重自然流向。
(相关资料:裁判文书3篇条文释义相关论文5篇)

第八十七条 【相邻关系中通行权】不动产权利人对相邻权利人因通行等必须利用其土地的，应当提供必要的便利。
(相关资料:地方法规1篇裁判文书9篇条文释义相关论文2篇)

第八十八条 【利用相邻土地】不动产权利人因建造、修缮建筑物以及铺设电线、电缆、水管、暖气和燃气管线等必须利用相邻土地、建筑物的，该土地、建筑物的权利人应当提供必要的便利。
(相关资料:裁判文书2篇条文释义相关论文6篇)

第八十九条 【通风、采光和日照的规定】建造建筑物，不得违反国家有关工程建设标准，妨碍相邻建筑物的通风、采光和日照。
(相关资料:裁判文书4篇条文释义相关论文5篇)

第九十条 【相邻不动产之间禁止排放、施放污染物】不动产权利人不得违反国家规定弃置固体废物，排放大气污染物、水污染物、噪声、光、电磁波辐射等有害物质。
(相关资料:条文释义相关论文5篇)

第九十一条 【维护相邻不动产安全】不动产权利人挖掘土地、建造建筑物、铺设管线以及安装设备等，不得危及相邻不动产的安全。
(相关资料:裁判文书6篇条文释义相关论文4篇)

第九十二条 【使用相邻不动产时避免造成损害】不动产权利人因用水、排水、通行、铺设管线等利用相邻不动产的，应当尽量避免对相邻的不动产权利人造成损害；造成损害的，应当给予赔偿。
(相关资料:裁判文书5篇条文释义相关论文3篇)

第八章 共有

第九十三条 【共有概念和共有形式】不动产或者动产可以由两个以上单位、个人共有。共有包括按份共有和共同共有。
(相关资料:裁判文书15篇条文释义相关论文2篇)

第九十四条 【按份共有】按份共有人对共有的不动产或者动产按照其份额享有所有权。
(相关资料:裁判文书12篇条文释义相关论文1篇)

第九十五条 【共同共有】共同共有人对共有的不动产或者动产共同享有所有权。
(相关资料:裁判文书16篇条文释义相关论文2篇)

第九十六条 【共有物管理】共有人按照约定管理共有的不动产或者动产；没有约定或者约定不明确的，各共有人都有管理的权利和义务。
(相关资料:裁判文书7篇条文释义相关论文2篇)

第九十七条 【共有物处分或者重大修缮】处分共有的不动产或者动产以及对共有的不动产或者动产作重大修缮的，应当经占份额三分之二的按份共有人或者全体共同人同意，但共有人之间另有约定的除外。
(相关资料:裁判文书14篇条文释义相关论文3篇)

第九十八条 【共有物管理费用负担】对共有物的管理费用以及其他负担，有约定的，按照约定；没有约定或者约定不明确的，按份共有人按照其份额负担，共同共有人共同负担。
(相关资料:裁判文书1篇条文释义相关论文2篇)



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Article 99 In case the co-owners of a commonly owned real property or movable property have stipulated that, in order to maintain the relationship of common ownership, it is not allowed to partition the real property or movable property, such stipulation shall apply; but if any of the co-owners needs to partition the real property or movable property for certain significant reasons, he may petition for partitioning it; if there is no stipulation or the stipulation is not clear, a several co-owner may petition for partitioning it at any time, and a joint owner may petition for partitioning it in case the basis for the common ownership disappears or he needs to partition it for certain significant reasons. If the partition causes any damage to any other person, the corresponding compensation shall be made.

Article 100 The co-owners of a commonly owned real property or movable property may determine the way of partition by means of negotiation. If no agreement is reached and the real property or movable property may be partitioned without affecting its value, the real object shall be partitioned; if it is difficult to partition it or its value would be affected because of the partition, the partition shall be executed by distributing the purchase price obtained from converting its value into money, the auction or selling off the real property or movable property. In case the real property or movable property obtained by a co-owner from the partition of a commonly owned real property or movable property has any flaw, the other co-owners shall partake the losses together.

Article 101 A several co-owner of a commonly owned real property or movable property may transfer his share of the real property or movable property. The other several co-owners have the preemptive right to purchase the share.

Article 102 As for an obligee's right or a debt generated from a commonly owned real property or movable property, a co-owner shall enjoy joint and several creditor's right or assume joint and several debt in terms of external relationship, except it is otherwise prescribed by any law or that the third party is aware of the fact that the co-owner does not have the relationship of joint and several creditor's right or debt. In terms of the internal relationship among the co-owners, a co-owner shall enjoy the creditor's right or assume the debt on the basis of his own share, except it is otherwise stipulated by the co-owners; joint owners shall enjoy the creditor's right or assume the debt on a common basis. Any several co-owner who overpays his share of the debt is entitled to recover the overpaid amount from the other co-owners.

Article 103 Where the co-owners of a real property or movable property does not stipulate whether the real property or movable property is subject to several co-ownership or joint ownership, or where the stipulation is not clear, it shall be deemed as a several co-ownership unless there is a family relationship among the co-owners.

Article 104 A several co-owner's share of a commonly owned real property or movable property shall be determined on the basis of his amount of contribution in case it is not stipulated or the stipulation is not clear; if it is impossible to determine the amount of contribution, each several co-owner shall enjoy an equal share.

Article 105 Where the usufructuary right or real right for security of a real property or movable property is owned by two or more entities or individuals, the provisions of this Chapter shall apply by analogy.

Chapter IX Special Provisions on the Acquisition of Ownership

Article 106 Where a person entitled to dispose a real property or movable property transfers the real property or movable property to an assignee, the owner has the right to recover the real property or movable property. Except it is otherwise prescribed by law, once it is under any of the following circumstances, the assignee shall obtain the ownership of the real property or movable property:

- (1) The assignee accepted the real property or movable property in good faith;
- (2) The real property or movable property is transferred at a reasonable price; or
- (3) The transferred real property or movable property shall have been registered in case registration is required by law, and shall have been delivered to the assignee in case registration is not required.

Where an assignee obtains the ownership of a real property or movable property in accordance with the preceding paragraph, the original owner may ask the person entitled to dispose of the real property or movable property to make compensation for his losses.

Where a party concerned obtains any other real right in good faith, he shall be governed by the preceding two paragraphs by analogy.

Article 107 The owner or any other holder is entitled to recover a lost property. Where the lost property is possessed by any other person through transfer, the owner is entitled to ask the person entitled to dispose of the property to make compensations for damages, or, within 2 years since the date when he knows who is the assignee, ask the assignee to return the original property. But if the assignee purchases the lost property by way of auction or from a qualified operator, the holder shall, when asking for returning the original property, pay the amount paid by the assignee for purchasing the property to the assignee. Where

第九十九条 【共有财产分割原则】 共有人约定不得分割共有的不动产或者动产,以维持共有关系的,应当按照约定,但共有人有重大理由需要分割的,可以请求分割;没有约定或者约定不明确的,按份共有人可以随时请求分割,共同共有人在共有的基础丧失或者有重大理由需要分割时可以请求分割。因分割对其他共有人造成损害的,应当给予赔偿。

(相关资料:裁判文书21篇条文释义及相关论文3篇)

第一百条 【共有物侵害方式】 共有人可以协商确定分割方式。达不成协议,共有的不动产或者动产可以分割并且不会因分割减损价值的,应当对实物予以分割;难以分割或者因分割会减损价值的,应当对折价或者拍卖、变卖取得的价款予以分割。共有人分割所得的不动产或者动产有瑕疵的,其他共有人应当分担损失。

(相关资料:裁判文书19篇条文释义及相关论文2篇)

第一百零一条 【共有人的优先购买权】 按份共有人可以转让其享有的共有的不动产或者动产份额。其他共有人在同等条件下享有优先购买的权利。

(相关资料:裁判文书5篇条文释义及相关论文5篇)

第一百零二条 【因共有财产产生的债权债务关系的效力】 因共有的不动产或者动产产生的债权债务,在对外关系上,共有人享有连带债权、承担连带债务,但法律另有规定或者第三人知道共有人不具有连带债权债务关系的除外;在共有人内部关系上,除共有人另有约定外,按份共有人按照份额享有债权、承担债务,共同共有人共同享有债权、承担债务。偿还债务超过自己应当承担份额的按份共有人,有权向其他共有人追偿。

(相关资料:裁判文书3篇条文释义及相关论文2篇)

第一百零三条 【共有关系不明对共有关系性质推定】 共有人对共有的不动产或者动产没有约定为按份共有或者共同共有,或者约定不明确的,除共有人具有家庭关系等外,视为按份共有。

(相关资料:裁判文书16篇条文释义及相关论文4篇)

第一百零四条 【按份共有份额不明的确定原则】 按份共有人对共有的不动产或者动产享有的份额,没有约定或者约定不明确的,按照出资额确定;不能确定出资额的,视为等额享有。

(相关资料:裁判文书6篇条文释义及相关论文3篇)

第一百零五条 【用益物权和担保物权的准共有】 两个以上单位、个人共同享有用益物权、担保物权的,参照本章规定。

(相关资料:条文释义及相关论文2篇)

第九章 所有权取得的特别规定

第一百零六条 【善意取得】 无处分权人将不动产或者动产转让给受让人的,所有权人有权追回;除法律另有规定外,符合下列情形的,受让人取得该不动产或者动产的所有权:

- (一) 受让人受让该不动产或者动产时是善意的;
- (二) 以合理的价格转让;
- (三) 转让的不动产或者动产依照法律规定应当登记的已经登记,不需要登记的已经交付给受让人。

受让人依照前款规定取得不动产或者动产的所有权的,原所有权人有权向无处分权人请求赔偿损失。当事人善意取得其他物权的,参照前两款规定。

(相关资料:司法解释1篇裁判文书27篇条文释义及相关论文40篇)

第一百零七条 【遗失物的善意取得】 所有权人或者其他权利人有权追回遗失物。该遗失物通过转让被他人占有的,权利人有权向无处分权人请求损害赔偿,或者自知道或者应当知道受让人之日起二年内向受让人请求返还原物,但受让人通过拍卖或者向具有经营资格的经营者购得该遗失物的,权利人请求返还原物时应当支付受让人所付的费用。权



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there is any other provision, such provision shall apply. After paying the amount paid by the assignee for purchasing the property to the assignee, the owner is entitled to recover the amount from the person entitled to dispose of the property.

Article 108 After a bona fide assignee obtains a real property, the original rights on the real property shall be eliminated, except the right that the bona fide assignee has already been or should be aware of when the transfer is made.

Article 109 A lost-and-found object shall be returned to the right holder of the object. The person who finds such object shall notify the right holder to claim the object or hand it over to the public security department or any other department in a timely manner.

Article 110 A relevant department shall, after receiving a lost-and-found object, in case it knows the right holder of the object, notify him to claim the object in a timely manner; in case it does not know, it shall publish an announcement on the finding of the lost property in a timely manner.

Article 111 A lost-and-found object shall be properly kept by the person who finds the object before it is handed over to the relevant department and by the relevant department before it is claimed by the right holder of the object. In case the object is damaged or lost deliberately or for gross negligence, the relevant personnel shall undertake the civil liabilities.

Article 112 When obtaining a lost-and-found object, the right holder of the object shall pay such necessary expenses as the cost for safekeeping the object to the person who finds the object or the relevant department.

In case a right holder offers a reward for finding the object, he shall fulfill the obligation of granting the reward when claiming the object.

In case the object is misappropriated by the person who finds the object, the person who finds the object shall have no right to ask for paying the expenses paid for safekeeping the object or petition the holder to fulfill the obligation as promised.

Article 113 A lost-and-found object that fails to be claimed within 6 months since the date when the announcement on the finding of the object is published shall be owned by the state.

Article 114 The finding of a drifter or the discovery of an object buried underground or a hidden property shall be governed by the relevant provisions on the finding of a lost-and-found property. In case there is any other provision in such laws as the law on the protection of cultural relics, such provisions shall apply.

Article 115 Where a principal property is transferred, the accessory property shall be transferred together with the principal property, except it is otherwise stipulated by the parties concerned.

Article 116 Natural fruits shall be obtained by the owner; in case there are both owner and holder of usufructuary right on the natural fruits, it shall be obtained by the holder of usufructuary right. Where it is stipulated otherwise by the parties concerned, such stipulation shall apply. Statutory fruits shall be obtained by the parties concerned as stipulated by them; where it is not stipulated or clearly stipulated, it shall be obtained in accordance with the practices of trading.

Part Three Usufructuary Right

Chapter X General Provisions

Article 117 A usufructuary right holder shall enjoy the right to possess, use and seek proceeds from the real property or movable property owned by someone else according to legal provisions.

Article 118 An entity or individual may possess, use and seek proceeds from the natural resources that are owned by the state or that are owned by the state but used by the collective as well as those that are owned by the collective.

Article 119 The state implements the system of fee-based use of natural resources, unless it is otherwise prescribed by any other laws.

利人向受让人支付所付费用后, 有权向无处分权人追偿。
(相关资料:条文释义相关论文8篇)

第一百零八条 【善意受让人取得动产后, 原权利消灭】善意受让人取得动产后, 该动产上的原有权利消灭, 但善意受让人在受让时知道或者应当知道该权利的除外。
(相关资料:裁判文书1篇条文释义相关论文8篇)

第一百零九条 【拾得遗失物返还】拾得遗失物, 应当返还权利人。拾得人应当及时通知权利人领取, 或者送交公安等有关部门。
(相关资料:条文释义相关论文2篇)

第一百一十条 【收到遗失物的处理】有关部门收到遗失物, 知道权利人的, 应当及时通知其领取; 不知道的, 应当及时发布招领公告。
(相关资料:条文释义相关论文1篇)

第一百一十一条 【遗失物保管】拾得人在遗失物送交有关部门前, 有关部门在遗失物被领取前, 应当妥善保管遗失物。因故意或者重大过失致使遗失物毁损、灭失的, 应当承担民事责任。
(相关资料:条文释义相关论文3篇)

第一百一十二条 【拾金不昧】权利人领取遗失物时, 应当向拾得人或者有关部门支付保管遗失物等支出的必要费用。权利人悬赏寻找遗失物的, 领取遗失物时应当按照承诺履行义务。拾得人侵占遗失物的, 无权请求保管遗失物等支出的费用, 也无权请求权利人按照承诺履行义务。
(相关资料:条文释义相关论文4篇)

第一百一十三条 【无人认领的遗失物归国家所有】遗失物自发布招领公告之日起六个月内无人认领的, 归国家所有。
(相关资料:条文释义相关论文3篇)

第一百一十四条 【拾得漂流物、发现埋藏物或者隐藏物的规定】拾得漂流物、发现埋藏物或者隐藏物的, 参照拾得遗失物的有关规定。文物保护法等法律另有规定的, 依照其规定。
(相关资料:条文释义相关论文2篇)

第一百一十五条 【从物随主物转让】主物转让的, 从物随主物转让, 但当事人另有约定的除外。
(相关资料:条文释义相关论文6篇)

第一百一十六条 【天然孳息及法定孳息归属】天然孳息, 由所有权人取得; 既有所有权人又有用益物权人的, 由用益物权人取得。当事人另有约定的, 按照约定。法定孳息, 当事人有约定的, 按照约定取得; 没有约定或者约定不明确的, 按照交易习惯取得。
(相关资料:裁判文书1篇条文释义相关论文9篇)

第三编 用益物权

第十章 一般规定

第一百一十七条 【用益物权人享有的基本权利】用益物权人对他人所有的不动产或者动产, 依法享有占有、使用和收益的权利。
(相关资料:裁判文书7篇条文释义相关论文6篇)

第一百一十八条 【国有和集体所有的自然资源, 单位和个人可以取得用益物权】国家所有或者国家所有由集体使用以及法律规定属于集体所有的自然资源, 单位、个人依法可以占有、使用和收益。
(相关资料:裁判文书1篇条文释义相关论文4篇)

第一百一十九条 【自然资源使用制度】国家实行自然资源有偿使用制度, 但法律另有规定的除外。
(相关资料:条文释义相关论文1篇)



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Article 120 A usufructuary right holder shall, when exercising its or his right, abide by the provisions on protection, reasonable exploration and utilization of resources as prescribed in the laws. An owner shall not intervene in the exercise of rights by the usufructuary right holder.

Article 121 In case a real property or movable property is expropriated or requisitioned, and thus causes loss of usufructuary right or affects the use of usufructuary right, the usufructuary right holder shall be entitled to obtain corresponding compensations according to Articles 42 and 44 of this Law.

Article 122 The right to use sea areas as lawfully obtained shall be governed by the law.

Article 123 The mineral prospecting right, the mining right, the water intake right and the right to use water areas or tidal flats for engaging in breeding or fishery shall be protected by law.

Chapter XI Right to the Contracted Management of Land

Article 124 A rural collective economic organization shall implement a dual operation system characterized by the combination of centralized operation with decentralized operation on the basis of household contracted management.

The system of land contracted management shall be implemented to the cultivated land, wood land, grassland, and land for other agricultural uses that are owned by farmers' collectives as well as those that are owned by the state and exploited by farmers' collectives.

Article 125 The holder of the right to the contracted management of land shall enjoy the right to possess, use and seek proceeds from the cultivated land, wood land and grassland, etc. under the contracted management thereof, and have the right to engage in planting, forestry, stockbreeding or other agricultural production activities.

Article 126 The term of a contract for cultivated land shall be 30 years. The term of a contract for grassland shall be 30 up to 50 years. The term of a contract for wood land shall be more than 30 years but less than 70 years. The term of a contract for special forest land may be extended upon approval of the forestry administrative department under the State Council.

After the term of a contract as mentioned in the preceding paragraph expires, the holder of the right to the contracted management of land may continue to fulfill the contract according to the relevant provisions of the state.

Article 127 The right to the contracted management of land shall be established as of the effectiveness of the contract on the right to the contracted management of land.

The local people's government at or above the county level shall issue a certificate of the right to the contracted management of land, a forestry right certificate or a grassland-use right certificate to the holder of right to the contracted management of land, register it in the brochure and confirm the right to the contracted management of land.

Article 128 The holder of the right to the contracted management of land shall be entitled to circulate the right to the contracted management of land according to the provisions in the law on the contracting of rural land. The circulated term shall not exceed the remnant term of the original contract on right to the contracted management of land. Without approval, no contracted land may be used for non-agricultural constructions.

Article 129 In the event that the circulation of the right to the contracted management of land is realized through exchange or transfer, if the parties concerned require that the circulation be registered, an application for the alteration registration of right to the contracted management of land shall be submitted to the local people's government at or above the county level. Without registration, neither party may challenge any bona fide third party.

Article 130 Within the duration of a contract, the contract-letting party shall not readjust the contracted land.

If proper readjustment of cultivated land or grassland as contracted is required due to such special events as natural calamities that have materially damaged the contracted land, it shall be conducted according to the legal provisions in the law on the contracting of rural land and other relevant laws.

Article 131 Within the term of a contract, the contract-letting party shall not take back the contracted land. Where there are separate provisions in the law on the contracting of rural land or any other law, such provisions shall prevail.

第一百二十条 【用益物权人的权利行使】用益物权人行使权利,应当遵守法律有关保护和合理开发利用资源的规定。所有权人不得干涉用益物权人行使权利。

(相关资料:裁判文书1篇条文释义相关论文7篇)

第一百二十一条 【用益物权人因征收、征用有权获得补偿】因不动产或者动产被征收、征用致使用益物权消灭或者影响用益物权行使的,用益物权人有权依照本法第四十二条、第四十四条的规定获得相应补偿。

(相关资料:裁判文书1篇条文释义相关论文10篇)

第一百二十二条 【海域使用权】依法取得的海域使用权受法律保护。

(相关资料:部门规章1篇条文释义相关论文5篇)

第一百二十三条 【合法探矿权等受法律保护】依法取得的探矿权、采矿权、取水权和使用水域、滩涂从事养殖、捕捞的权利受法律保护。

(相关资料:部门规章3篇条文释义相关论文3篇)

第十一章 土地承包经营权

第一百二十四条 【农村集体经济组织实行双层经营体制】农村集体经济组织实行家庭承包经营为基础、统分结合的双层经营体制。

农民集体所有和国家所有由农民集体使用的耕地、林地、草地以及其他用于农业的土地,依法实行土地承包经营制度。

(相关资料:条文释义相关论文5篇)

第一百二十五条 【土地承包经营权人享有的基本权利】土地承包经营权人依法对其承包经营的耕地、林地、草地等享有占有、使用和收益的权利,有权从事种植业、林业、畜牧业等农业生产。

(相关资料:裁判文书21篇条文释义相关论文3篇)

第一百二十六条 【土地承包期】耕地的承包期为三十年。草地的承包期为三十年至五十年。林地的承包期为三十年至七十年;特殊林木的林地承包期,经国务院林业行政主管部门批准可以延长。

前款规定的承包期届满,由土地承包经营权人按照国家有关规定继续承包。

(相关资料:裁判文书5篇条文释义相关论文7篇)

第一百二十七条 【土地承包经营权设立和登记】土地承包经营权自土地承包经营权合同生效时设立。

县级以上地方人民政府应当向土地承包经营权人发放土地承包经营权证、林权证、草原使用权证,并登记造册,确认土地承包经营权。

(相关资料:裁判文书11篇条文释义相关论文12篇)

第一百二十八条 【家庭承包的土地承包经营权流转】土地承包经营权人依照农村土地承包法的规定,有权将土地承包经营权采取转包、互换、转让等方式流转。流转的期限不得超过承包期的剩余期限。未经依法批准,不得将承包地用于非农建设。

(相关资料:裁判文书3篇条文释义相关论文11篇)

第一百二十九条 【互换、转让土地承包经营权进行登记】土地承包经营权人将土地承包经营权互换、转让,当事人要求登记的,应当向县级以上地方人民政府申请土地承包经营权变更登记;未经登记,不得对抗善意第三人。

(相关资料:条文释义相关论文10篇)

第一百三十条 【承包地调整】承包期内发包人不得调整承包地。

因自然灾害严重毁损承包地等特殊情形,需要适当调整耕地和草地的,应当依照农村土地承包法等法律规定处理。

(相关资料:裁判文书2篇条文释义相关论文2篇)

第一百三十一条 【承包地收回】承包期内发包人不得收回承包地。农村土地承包法等法律另有规定的,依照其规定。

(相关资料:裁判文书2篇条文释义相关论文1篇)



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Article 132 If a contracted land is expropriated, corresponding compensations shall be given to the holder of the right to the contracted management of land according to Paragraph 2, Article 42 of this Law.

Article 133 The right to the contracted management of land to barren land or other rural land that is contracted by means of bid invitation, auction, or open negotiation, etc. may be circulated by means of transfer, lease, equity contribution, or mortgage, etc.

Article 134 The implementation of contracted management to the rural land that is owned by the state shall be governed by the relevant provisions in this Law by analogy.

Chapter XII Right to Use Land for Construction Purpose

Article 135 The holder of the right to use land for construction shall be entitled to possess, use and seek proceeds from the land owned by the state, and be entitled to make use of the land for constructing buildings, fixtures and their auxiliary facilities.

Article 136 The right to use land for construction may be established separately on the surface of or above or under the land. The newly-established right to use land for construction shall not damage the usufructuary right that has already been established.

Article 137 The right to use land for construction may be established by means of transfer or allotment, etc.
The land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or the land for which there are two or more intended users shall be transferred by means of auction, bid invitation or any other public bidding method.
It is strictly prohibited to establish the right to use land for construction by means of allotment. The means of allotment shall be adopted according to the provisions on land uses in the laws and administrative regulations.

Article 138 Where the right to use land for construction is established by means of auction, bid invitation, or agreement, etc., the parties concerned shall enter into a written contract on the transfer of the right to use land for construction.
A contract on transfer of the right to use land for construction shall generally include the following clauses:

- (1) Name and domicile of the parties;
- (2) Location and acreage, etc. of the land;
- (3) Space occupied by buildings, fixtures and their affiliated facilities;
- (4) Purposes of use;
- (5) Term of use;
- (6) Payment methods for allotment fees and other fees; and
- (7) Dispute resolution method.

Article 139 For the creation of the right to use land for construction, an application for the registration of the right to use land for construction shall be filed with the registration organ. The right to use land for construction shall be established upon registration. The registration organ shall issue a certification on the right to use land for construction to the holder of the right to use land for construction.

Article 140 The holder of the right to use land for construction shall reasonably utilize the land, shall not change the purpose of land use, and shall be subject to the approval of the relevant administrative department if the purpose of land use needs to be changed.

Article 141 The holder of the right to use land for construction shall pay transfer fees and other fees according to the legal provisions and the contract.

Article 142 The ownership of the buildings, fixtures and their affiliated facilities built 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 it is otherwise proved by contrary evidence.

第一百三十二条 【承包地被征收的补偿】承包地被征收的，土地承包经营权人有权依照本法第四十二条第二款的规定获得相应补偿。
(相关资料:裁判文书33篇条文释义相关论文9篇)

第一百三十三条 【以招标等方式承包的土地承包经营权流转】通过招标、拍卖、公开协商等方式承包荒地等农村土地，依照农村土地承包法等法律和国务院的有关规定，其土地承包经营权可以转让、入股、抵押或者以其他方式流转。
(相关资料:裁判文书7篇条文释义相关论文6篇)

第一百三十四条 【国有农用地实行承包经营的法律适用】国家所有的农用地实行承包经营的，参照本法的有关规定。
(相关资料:条文释义相关论文2篇)

第十二章 建设用地使用权

第一百三十五条 【建设用地使用权概念】建设用地使用权人依法对国家所有的土地享有占有、使用和收益的权利，用该土地建造建筑物、构筑物及其附属设施。
(相关资料:裁判文书64篇条文释义相关论文3篇)

第一百三十六条 【建设用地使用权分层设立】建设用地使用权可以在土地的地表、地上或者地下分别设立。新设立的建设用地使用权，不得损害已设立的用益物权。
(相关资料:裁判文书2篇条文释义相关论文6篇)

第一百三十七条 【建设用地使用权出让方式】设立建设用地使用权，可以采取出让或者划拨等方式。工业、商业、旅游、娱乐和商品住宅等经营性用地以及同一土地有两个以上意向用地者的，应当采取招标、拍卖等公开竞价的方式出让。
严格限制以划拨方式设立建设用地使用权。采取划拨方式的，应当遵守法律、行政法规关于土地用途的规定。
(相关资料:条文释义相关论文5篇)

第一百三十八条 【建设用地使用权出让合同内容】采取招标、拍卖、协议等出让方式设立建设用地使用权的，当事人应当采取书面形式订立建设用地使用权出让合同。
建设用地使用权出让合同一般包括下列条款：

- (一) 当事人的名称和住所；
 - (二) 土地界址、面积等；
 - (三) 建筑物、构筑物及其附属设施占用的空间；
 - (四) 土地用途；
 - (五) 使用期限；
 - (六) 出让金等费用及其支付方式；
 - (七) 解决争议的方法。
- (相关资料:条文释义相关论文3篇)

第一百三十九条 【建设用地使用权登记】设立建设用地使用权的，应当向登记机构申请建设用地使用权登记。建设用地使用权自登记时设立。登记机构应当向建设用地使用权人发放建设用地使用权证书。
(相关资料:裁判文书1篇条文释义相关论文3篇)

第一百四十条 【土地用途】建设用地使用权人应当合理利用土地，不得改变土地用途；需要改变土地用途的，应当依法经有关行政主管部门批准。
(相关资料:条文释义相关论文3篇)

第一百四十一条 【建设用地使用权人支付出让金等费用的义务】建设用地使用权人应当依照法律规定以及合同约定支付出让金等费用。
(相关资料:条文释义相关论文4篇)

第一百四十二条 【建设用地使用权人建造的建筑物等设施的权属】建设用地使用权人建造的建筑物、构筑物及其附属设施的所有权属于建设用地使用权人，但有相反证据证明



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Article 143 The holder of the right to use land for construction shall be entitled to transfer, exchange, use as equity contributions, endow or mortgage the right to use land for construction, unless it is otherwise prescribed by any law.

Article 144 In case the right to use land for construction is transferred, exchanged, used as equity contributions, endowed or mortgaged, the parties shall conclude a corresponding contract in written form. The contractual term shall be stipulated by the parties concerned, but shall not exceed the remnant term as stipulated in the contract on transfer of the right to use land for construction.

Article 145 In case the right to use land for construction is transferred, exchanged, used as equity contributions, or endowed, an application for alteration registration shall be filed with the registration organ.

Article 146 In case the right to use land for construction is transferred, exchanged, used as equity contributions or endowed, the buildings, fixtures and their affiliated facilities on the land shall be disposed of concurrently.

Article 147 In case the buildings, fixtures and their affiliated facilities are transferred, exchanged, used as equity contributions or endowed, the right to use land for construction occupied by the aforesaid buildings, fixtures and their affiliated facilities shall be disposed of concurrently.

Article 148 Before the term of the right to use land for construction expires, if the land needs to be taken back in advance due to public interests, compensations shall be given to the houses and other real properties on the land according to Article 42 of this Law, and corresponding land transfer fees shall be refunded.

Article 149 The term of the right to use land for construction for dwelling houses shall be automatically renewed upon expiration. The term of the right to use land for construction not for dwelling houses shall be renewed according to legal provisions. Where there are stipulations about the ownership of houses and other real properties on the aforesaid land, such stipulations shall prevail; if there is no such stipulation or the stipulations are not explicit, the ownership shall be determined according to the provisions in the laws and administrative regulations.

Article 150 In case the right to use land for construction is eliminated, the transferor shall go through deregistration procedures in a timely manner, and the registration organ shall take back the certificate on the right to use land for construction.

Article 151 In case a piece of collectively-owned land is used as land for construction, it shall be handled according to the law on land administration and other relevant laws.

Chapter XIII Right to Use House Sites (or Right to Use Lands for Building Houses)

Article 152 The holder of the right to use house sites shall be entitled to possess and use collectively-owned land, and to make use of the land for constructing residential houses and their affiliated facilities.

Article 153 The acquisition, exercise and transfer of the right to use house sites shall be governed by the law on land administration, other relevant laws and the relevant provisions of the state.

Article 154 In case a house site is eliminated due to any natural disaster, etc., the right to use house site shall be eliminated. A villager without a house site shall be allotted a house site again.

Article 155 In case the registered right to use house sites is transferred or eliminated, the alteration or cancellation registration shall be made in a timely manner.

明的除外。

(相关资料:裁判文书1篇条文释义相关论文4篇)

第一百四十三条 【建设用地使用权流转方式】建设用地使用权人有权将建设用地使用权转让、互换、出资、赠与或者抵押,但法律另有规定的除外。

(相关资料:裁判文书1篇条文释义相关论文1篇)

第一百四十四条 【处分建设用地使用权的合同形式和期限】建设用地使用权转让、互换、出资、赠与或者抵押的,当事人应当采取书面形式订立相应的合同。使用期限由当事人约定,但不得超过建设用地使用权的剩余期限。

(相关资料:条文释义相关论文1篇)

第一百四十五条 【建设用地使用权流转后变更登记】建设用地使用权转让、互换、出资或者赠与的,应当向登记机构申请变更登记。

(相关资料:条文释义相关论文2篇)

第一百四十六条 【建筑物等设施随建设用地使用权的流转而一并处分】建设用地使用权转让、互换、出资或者赠与的,附着于该土地上的建筑物、构筑物及其附属设施一并处分。

(相关资料:条文释义相关论文1篇)

第一百四十七条 【建设用地使用权随建筑物等设施的流转而一并处分】建筑物、构筑物及其附属设施转让、互换、出资或者赠与的,该建筑物、构筑物及其附属设施占用范围内的建设用地使用权一并处分。

(相关资料:裁判文书1篇条文释义相关论文2篇)

第一百四十八条 【建设用地使用权提前收回及其补偿】建设用地使用权期间届满前,因公共利益需要提前收回该土地的,应当依照本法第四十二条的规定对该土地上的房屋及其他不动产给予补偿,并退还相应的出让金。

(相关资料:条文释义相关论文8篇)

第一百四十九条 【建设用地使用权续期及土地上的房屋及其他不动产归属】住宅建设用地使用权期间届满的,自动续期。非住宅建设用地使用权期间届满后的续期,依照法律规定办理。该土地上的房屋及其他不动产的归属,有约定的,按照约定;没有约定或者约定不明确的,依照法律、行政法规的规定办理。

(相关资料:地方法规2篇条文释义相关论文7篇)

第一百五十条 【建设用地使用权注销登记】建设用地使用权消灭的,出让人应当及时办理注销登记。登记机构应当收回建设用地使用权证书。

(相关资料:条文释义相关论文2篇)

第一百五十一条 【集体所有的土地作为建设用地的规定】集体所有的土地作为建设用地的,应当依照土地管理法等法律规定办理。

(相关资料:条文释义相关论文2篇)

第十三章 宅基地使用权

第一百五十二条 【宅基地使用权的权利内容】宅基地使用权人依法对集体所有的土地享有占有和使用的权利,有权依法利用该土地建造住宅及其附属设施。

(相关资料:裁判文书25篇条文释义相关论文7篇)

第一百五十三条 【宅基地使用权的取得、行使和转让适用法律的衔接性】宅基地使用权的取得、行使和转让,适用土地管理法等法律和国家有关规定。

(相关资料:裁判文书6篇条文释义相关论文10篇)

第一百五十四条 【宅基地灭失后重新分配】宅基地因自然灾害等原因灭失的,宅基地使用权消灭。对失去宅基地的村民,应当重新分配宅基地。

(相关资料:裁判文书1篇条文释义相关论文3篇)

第一百五十五条 【宅基地使用权的变更登记和注销登记】已经登记的宅基地使用权转让或者消灭的,应当及时办理变更登记或者注销登记。

(相关资料:裁判文书2篇条文释义相关论文8篇)



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Chapter XIV Easement Rights

第十四章 地役权

Article 156 An easement holder shall be entitled to make use of the real property of someone else according to the contract so as to increase the efficiency of his own real property. The expression of "real property of someone else" as mentioned in the preceding Paragraph shall be the servient tenement, and the expression of "one's own real property" shall be the dominant tenement.

第一百五十六条 【地役权】地役权人有权按照合同约定，利用他人的不动产，以提高自己的不动产的效益。前款所称他人的不动产为供役地，自己的不动产为需役地。
(相关资料:条文释义相关论文3篇)

Article 157 For the creation of an easement, the parties concerned shall conclude an easement contract in written form.

第一百五十七条 【设立地役权】设立地役权，当事人应当采取书面形式订立地役权合同。地役权合同一般包括下列条款：

An easement contract shall generally include the following clauses:

- (1) Name and domicile of the parties concerned;
- (2) Locations of servient tenement and dominant tenement;
- (3) Purposes and methods of utilization;
- (4) Term of utilization;
- (5) Fees and payment method; and
- (6) Dispute resolution method.

(一) 当事人的姓名或者名称和住所；

(二) 供役地和需役地的位置；

(三) 利用目的和方法；

(四) 利用期限；

(五) 费用及其支付方式；

(六) 解决争议的方法。

(相关资料:条文释义相关论文6篇)

Article 158 The easement shall be established as of the effectiveness of an easement contract. In case the parties concerned think it necessary to have it registered, they can apply for easement registration with the registration organ; otherwise, they shall not challenge any bona fide third party.

第一百五十八条 【地役权效力】地役权自地役权合同生效时设立。当事人要求登记的，可以向登记机构申请地役权登记；未经登记，不得对抗善意第三人。
(相关资料:条文释义相关论文11篇)

Article 159 The holder of servient tenement shall permit an easement holder to make use of his/its land according to the contract, and shall not hamper the latter's exercise of the right.

第一百五十九条 【供役地权利人义务】供役地权利人应当按照合同约定，允许地役权人利用其土地，不得妨害地役权人行使权利。
(相关资料:裁判文书2篇条文释义相关论文1篇)

Article 160 An easement holder shall make use of the servient tenement according to the purposes and methods as stipulated in the contract, and try to reduce the real right restrictions on the holder of the servient tenement.

第一百六十条 【地役权人权利义务】地役权人应当按照合同约定的利用目的和方法利用供役地，尽量减少对供役地权利人物权的限制。
(相关资料:条文释义)

Article 161 The term of easement shall be stipulated by the parties concerned, however, it can not exceed the remnant term of the right to the contracted management of land, the right to use land for construction or any other usufructuary right.

第一百六十一条 【地役权期限】地役权的期限由当事人约定，但不得超过土地承包经营权、建设用地使用权等用益物权的剩余期限。
(相关资料:条文释义相关论文2篇)

Article 162 In case a land owner enjoys or assumes the easement, when the right to the contracted management of land or the right to use house site is established, the holder of the right to the contracted management of land or the right to use house site may continue enjoying or assuming the established easement.

第一百六十二条 【在享有和负担地役权的土地上设立承包经营权、宅基地使用权】土地所有权人享有地役权或者负担地役权的，设立土地承包经营权、宅基地使用权时，该土地承包经营权人、宅基地使用权人继续享有或者负担已设立的地役权。
(相关资料:条文释义相关论文4篇)

Article 163 In case the right to the contracted management of land, the right to use house site or any other usufructuary right on the land has already been created, the land owner shall not establish any easement without consent of the aforesaid usufructuary right holder.

第一百六十三条 【在已设立用益物的土地上设立地役权】土地上已设立土地承包经营权、建设用地使用权、宅基地使用权等权利的，未经用益物权人同意，土地所有权人不得设立地役权。
(相关资料:条文释义相关论文1篇)

Article 164 The easement shall not be transferred alone. In case the right to the contracted management of land, the right to use land for construction, the right to use house site or any other usufructuary right is transferred, the easement shall be transferred concurrently, unless it is otherwise stipulated by the contract.

第一百六十四条 【地役权不得与需役地分离而单独转让】地役权不得单独转让。土地承包经营权、建设用地使用权等转让的，地役权一并转让，但合同另有约定的除外。
(相关资料:条文释义相关论文3篇)

Article 165 The easement shall not be mortgaged by itself. In case the right to the contracted management of land or the right to use land for construction, etc. is mortgaged, the easement shall be transferred concurrently when the mortgage is realized.

第一百六十五条 【地役权不得单独抵押】地役权不得单独抵押。土地承包经营权、建设用地使用权等抵押的，在实现抵押权时，地役权一并转让。
(相关资料:条文释义相关论文3篇)

Article 166 When the dominant tenement as well as the right to the contracted management of land, the right to use land for construction or the right to use house site thereon is partially transferred, and if the easement is involved in the transferred part, the transferee shall enjoy the easement at the same time.

第一百六十六条 【需役地上的土地承包经营权、建设用地使用权部分转让】需役地以及需役地上的土地承包经营权、建设用地使用权部分转让时，转让部分涉及地役权的，受让人同时享有地役权。
(相关资料:条文释义相关论文2篇)

Article 167 When the servient tenement and the right to the contracted management of land, the right to use land for construction or the right to use house site thereon is partially transferred, and if the easement is involved in the part as transferred, the easement shall be binding on the transferee.

第一百六十七条 【供役地上的土地承包经营权、建设用地使用权部分转让】供役地以及供役地上的土地承包经营权、建设用地使用权部分转让时，转让部分涉及地役权的，



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Article 168 In case an easement holder is under any of the following circumstances, the holder of the servient tenement shall be entitled to rescind the easement relationship, and the easement shall be eliminated:

- (1) Violating the legal provisions or the contract, or abusively using the easement; or
- (2) Failing to pay fees for the paid use of servient tenement after being urged to do so within a reasonable period for two times upon expiration of the stipulated time limit for payment.

Article 169 The alteration or cancellation registration shall be timely executed for the alteration, transfer or elimination of the registered easement.

Part Four Real Rights for Security (Secured Property Rights)

Chapter XV General Provisions

Article 170 The holder of real rights for security shall enjoy priority to receive payments from the property for security in case the obligor fails to pay its due debts or the circumstance for the realization of real rights for security as stipulated by the parties concerned occurs, unless it is otherwise prescribed by any law.

Article 171 An obligee (creditor) may, in such civil activities as loans or sales, establish the real rights for security according to this Law or any other law where the security is required for safeguarding the realization of its/his credits.

To provide security to the obligee for an obligor (debtor), a third party may require the obligor to provide countersecurity. The countersecurity shall be governed by this Law and other relevant laws.

Article 172 For the creation of real rights for security, a security contract shall be concluded according to this Law and other relevant laws. A security contract shall be subordinated to the principal contract. When the principal contract is nullified, the security contract shall be invalidated, unless it is otherwise prescribed by any law.

After a security contract is nullified upon confirmation, the obligor, the security provider and the obligee that has faults shall assume relevant civil liabilities in light of their respective faults.

Article 173 The security range of the real rights for security shall include principal obligee's rights and their interests, default fines, damages and expenses for keeping the property for security and for realizing the real rights for security. Where there are separate stipulations between the parties concerned, such stipulations shall prevail.

Article 174 In case the property for security is damaged, lost or expropriated during the term of security, the holder of the real rights for security may seek preferred compensations from the insurance money, damages or indemnities, etc. incurred there from, or may submit such insurance money, damages or indemnities, etc. to a competent authority if the term for performing the obligee's rights as secured has not expired.

Article 175 Where a third party provides any security, if the obligee allows the obligor to transfer all or part of its obligations without the written consent of the third party, the security provider does not have to assume corresponding security liabilities.

Article 176 Where a secured credit involves both physical and personal security, if the obligor fails to pay its due debts or any circumstance for realizing the property for security as stipulated by the parties concerned occurs, the obligee shall realize the obligee's rights according to the stipulations; where there is no such stipulation or the stipulations are not explicit, and the obligor provides his/its own property for the security, the obligee shall realize the obligee's rights firstly by the security by property; and where a third party provides the security by property, the obligee may realize the obligee's rights with the physical security or may require the guarantor to assume the guaranty liability. The third party for providing the security may, after assuming the security liability, be entitled to recourse payments against the obligor.

地役权对受让人具有约束力。

(相关资料:条文释义相关论文1篇)

第一百六十八条 【地役权消灭】地役权人有下列情形之一的, 供役地权利人有权解除地役权合同, 地役权消灭:

- (一) 违反法律规定或者合同约定, 滥用地役权;
- (二) 有偿利用供役地, 约定的付款期间届满后在合理期限内经两次催告未支付费用。
- (相关资料:条文释义)

第一百六十九条 【地役权变动后的登记】已经登记的地役权变更、转让或者消灭的, 应当及时办理变更登记或者注销登记。

(相关资料:条文释义相关论文3篇)

第四编 担保物权

第十五章 一般规定

第一百七十条 【担保物权的含义】担保物权人在债务人不履行到期债务或者发生当事人约定的实现担保物权的情形, 依法享有就担保财产优先受偿的权利, 但法律另有规定的除外。

(相关资料:裁判文书13篇条文释义相关论文5篇)

第一百七十一条 【担保物权适用范围及反担保】债权人在借贷、买卖等民事活动中, 为保障实现其债权, 需要担保的, 可以依照本法和其他法律的规定设立担保物权。

第三人为债务人向债权人提供担保的, 可以要求债务人提供反担保。反担保适用本法和其他法律的规定。

(相关资料:裁判文书4篇条文释义相关论文2篇)

第一百七十二条 【担保合同从属性以及担保合同无效后的法律责任】设立担保物权, 应当依照本法和其他法律的规定订立担保合同。担保合同是主债权债务合同的从合同。主债权债务合同无效, 担保合同无效, 但法律另有规定的除外。

担保合同被确认无效后, 债务人、担保人、债权人有过错的, 应当根据其过错各自承担相应的民事责任。

(相关资料:司法解释2篇裁判文书5篇条文释义相关论文4篇)

第一百七十三条 【担保物权的担保范围】担保物权的担保范围包括主债权及其利息、违约金、损害赔偿金、保管担保财产和实现担保物权的费用。当事人另有约定的, 按照约定。

(相关资料:裁判文书26篇条文释义相关论文5篇)

第一百七十四条 【担保物权上代位性】担保期间, 担保财产毁损、灭失或者被征收等, 担保物权人可以就获得的保险金、赔偿金或者补偿金等优先受偿。被担保债权的履行期未届满的, 也可以提存该保险金、赔偿金或者补偿金等。

(相关资料:裁判文书1篇条文释义)

第一百七十五条 【未经担保人同意允许债务人转移债务的法律后果】第三人提供担保, 未经其书面同意, 债权人允许债务人转移全部或者部分债务的, 担保人不再承担相应的担保责任。

(相关资料:条文释义相关论文3篇)

第一百七十六条 【物的担保与人的担保关系】被担保的债权既有物的担保又有人的担保的, 债务人不履行到期债务或者发生当事人约定的实现担保物权的情形, 债权人应当按照约定实现债权; 没有约定或者约定不明确, 债务人自己提供物的担保的, 债权人应当先就该物的担保实现债权; 第三人提供物的担保的, 债权人可以就物的担保实现债权, 也可以要求保证人承担保证责任。提供担保的第三人承担担保责任后, 有权向债务人追偿。

(相关资料:司法解释1篇裁判文书99篇条文释义相关论文5篇)



Article 177 In any of the following circumstances, the real rights for security may be eliminated:

- (1) The principal obligee's rights are eliminated;
- (2) The real rights for security have been realized;
- (3) The obligee abandons the real rights for security; or
- (4) Any other circumstance as prescribed by any law under which the real rights for security will be eliminated.

Article 178 In case any provision in the Security Law conflicts with this Law, the latter shall prevail.

Chapter XVI Right to Mortgage

Section 1 General Right to Mortgage

Article 179 An obligor (debtor) or a third party may, for the security of the payment of debts, mortgage his properties to the obligee (creditor) without transferring the possession of such properties, and when the obligor fails to pay due debts or any circumstance for realizing the mortgage right as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from such properties. The 'obligor' or 'third party' as prescribed in the preceding paragraph shall be the mortgagor, the 'obligee' shall be the mortgagee, and the 'properties for security' shall be the properties under mortgage.

Article 180 The following properties to which the obligor or the third party has the right to dispose of may be used for mortgage:

- (1) Buildings and other fixed objects on the ground;
- (2) The right to use land for construction;
- (3) The right to contracted management of barren land, etc. as obtained by means of bid invitation, auction and public consultation, etc.;
- (4) Manufacturing facilities, raw materials, semi-manufactured goods and products;
- (5) Buildings, vessels and aircraft that are under construction;
- (6) Means of communications and transportation;
- (7) The properties other than those that shall not be mortgaged according to any law or administrative regulation.

A mortgagor may mortgage all the properties listed in the previous paragraph together.

Article 181 Upon the written agreement between the parties concerned, an enterprise, individual industrial and commercial household or agricultural production operator may mortgage the manufacturing facilities, raw materials, semi-manufactured goods and products it has already owned or is going to own, and when the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the movable properties that exist when the parties concerned stipulate to realize the right to mortgage.

Article 182 In case a building is mortgaged, the right to use land for construction occupied by this building shall be mortgaged together. In case the right to use land for construction is mortgaged, all the buildings on this land shall be mortgaged together.

In case a mortgagor fails to mortgage the properties according to the preceding paragraph, the properties that have not been mortgaged shall be regarded as having been mortgaged together.

Article 183 The right to use land for construction of a township or village enterprise shall not be mortgaged by itself. In case the plant of a township and village enterprise is mortgaged, the right to use land for construction occupied by this plant shall be mortgaged together.

Article 184 None of the following properties may be mortgaged:

- (1) Land ownership;

第一百七十七条 【担保物权消灭原因】有下列情形之一的，担保物权消灭：

- (一) 主债权消灭；
- (二) 担保物权实现；
- (三) 债权人放弃担保物权；

(四) 法律规定担保物权消灭的其他情形。

(相关资料:地方法规1篇裁判文书7篇条文释义相关论文1篇)

第一百七十八条 【担保法与本法效力衔接】担保法与本法的规定不一致的，适用本法。

(相关资料:司法解释2篇裁判文书11篇条文释义相关论文5篇)

第十六章 抵押权

第一节 一般抵押权

第一百七十九条 【抵押权基本权利】为担保债务的履行，债务人或者第三人不移转财产的占有，将该财产抵押给债权人的，债务人未履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就该财产优先受偿。

前款规定的债务人或者第三人为抵押人，债权人为抵押权人，提供担保的财产为抵押财产。

(相关资料:裁判文书74篇条文释义相关论文2篇)

第一百八十条 【抵押财产范围】债务人或者第三人有权处分的下列财产可以抵押：

- (一) 建筑物和其他土地附着物；
- (二) 建设用地使用权；
- (三) 以招标、拍卖、公开协商等方式取得的荒地等土地承包经营权；
- (四) 生产设备、原材料、半成品、产品；
- (五) 正在建造的建筑物、船舶、航空器；
- (六) 交通运输工具；

(七) 法律、行政法规未禁止抵押的其他财产。

抵押人可以将前款所列财产一并抵押。

(相关资料:地方法规2篇裁判文书23篇条文释义相关论文24篇)

第一百八十一条 【浮动抵押】经当事人书面协议，企业、个体工商户、农业生产经营者可以将现有的以及将有的生产设备、原材料、半成品、产品抵押，债务人未履行到期债务或者发生当事人约定的实现抵押权的情形，债权人有权就实现抵押权时的动产优先受偿。

(相关资料:地方法规1篇条文释义相关论文15篇)

第一百八十二条 【房地产抵押关系】以建筑物抵押的，该建筑物占用范围内的建设用地使用权一并抵押。以建设用地使用权抵押的，该土地上的建筑物一并抵押。

抵押人未依照前款规定一并抵押的，未抵押的财产视为一并抵押。

(相关资料:司法解释1篇裁判文书9篇条文释义相关论文5篇)

第一百八十三条 【乡镇、村企业的建筑物和建设用地使用权抵押】乡镇、村企业的建设用地使用权不得单独抵押。以乡镇、村企业的厂房等建筑物抵押的，其占用范围内的建设用地使用权一并抵押。

(相关资料:司法解释1篇条文释义相关论文5篇)

第一百八十四条 【禁止抵押】下列财产不得抵押：

- (一) 土地所有权；



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(2) The right to use cultivated land, house sites, land set aside for farmers to cultivate for their private use, hilly land allotted for private use and other collectively-owned land, unless it is otherwise prescribed by any law;

(3) Educational, medical, healthy and other public welfare facilities of schools, kindergartens, hospitals and other institutions and social groups with the aim of benefiting the public;

(4) Properties whose ownership or use rights are unclear or controversial;

(5) Properties that are legally confiscated, seized or controlled; or

(6) Other properties that cannot be mortgaged according to any law or administrative regulation.

Article 185 To create a right to mortgage, the parties concerned shall conclude a mortgage contract in written form.

A mortgage contract shall generally include the following clauses:

(1) The variety and amount of the obligee's rights as secured;

(2) The time limit for the obligor to pay debts;

(3) The name, amount, quality, condition, location, attribution of ownership or use right of the property under mortgage; and

(4) The range of security.

Article 186 Before the time limit for paying debts expires, a mortgagee shall not stipulate with the mortgagor that the ownership of the property under mortgage will be transferred to the obligee when the obligor fails to pay its due debts.

Article 187 As for the mortgage of a property as prescribed in Item (1), (2) or (3) of Paragraph 1 of Article 180 of this Law or a building under construction as prescribed in Item (5), mortgage registration shall be made. The right to mortgage shall be established as of the date of registration.

Article 188 As for the mortgage of a property as prescribed in Item (4) or (6) of Paragraph 1 of Article 180 of this Law or a vessel or aircraft under construction as prescribed in Item (5), the right to mortgage shall come into effect as of the effectiveness of the mortgage contract; without the registration, the right to mortgage shall not challenge any bona fide third party.

Article 189 In case an enterprise, individual industrial and commercial household or agricultural production operator mortgages any of the movable properties prescribed in Article 181 of this Law, it shall file registration with the administrative department for industry and commerce at the place where the mortgagor resides. The right to mortgage shall come into effect as of the effectiveness of the mortgage contract; without the registration, the right to mortgage shall not challenge any bona fide third party. The registration of the mortgage prescribed in Article 181 of this Law shall not challenge the buyer which has paid a reasonable price in normal business operations and has obtained the property under mortgage.

Article 190 In case the property under mortgage has been leased before the conclusion of the mortgage contract, the original leasehold relations shall not be affected by the right to mortgage. In case the property under mortgage is leased after the right to mortgage has been established, the leasehold relation shall be affected by the registered right to mortgage.

Article 191 In case a mortgagor transfers the property under mortgage during the mortgage term upon consent of the mortgagee, the mortgagor shall pay off its debts to the mortgagee with the money incurred from the transfer in advance or submit the said money to a competent authority for keeping. The value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor. A mortgagor shall not transfer the property under mortgage during the mortgage term without the mortgagee's consent, unless the transferee pays off the debts on its behalf so as to eliminate the right to mortgage.

Article 192 The right to mortgage shall not be separated from the obligee's rights or be transferred alone, or be used as a security for other obligee's rights. When the obligee's rights are transferred, the right to mortgage for the said obligee's rights shall be transferred together, unless it is otherwise prescribed by any law or is otherwise stipulated by the parties concerned.

(二) 耕地、宅基地、自留地、自留山等集体所有的土地使用权，但法律规定可以抵押的除外；

(三) 学校、幼儿园、医院等以公益为目的的事业单位、社会团体的教育设施、医疗卫生设施和其他社会公益设施；

(四) 所有权、使用权不明或者有争议的财产；

(五) 依法被查封、扣押、监管的财产；

(六) 法律、行政法规规定不得抵押的其他财产。

(相关资料:部门规章1篇地方法规2篇裁判文书5篇条文释义相关论文13篇)

第一百八十五条 【设立抵押权】 设立抵押权，当事人应当采取书面形式订立抵押合同。

抵押合同一般包括下列条款：

(一) 被担保债权的种类和数额；

(二) 债务人履行债务的期限；

(三) 抵押财产的名称、数量、质量、状况、所在地、所有权归属或者使用权归属；

(四) 担保的范围。

(相关资料:裁判文书3篇条文释义相关论文5篇)

第一百八十六条 【禁止流押】 抵押权人在债务履行期届满前，不得与抵押人约定债务人不履行到期债务时抵押财产归债权人所有。

(相关资料:裁判文书4篇条文释义相关论文6篇)

第一百八十七条 【不动产抵押登记】 以本法第一百八十条第一款第一项至第三项规定的财产或者第五项规定的正在建造的建筑物抵押的，应当办理抵押登记。抵押权自登记时设立。

(相关资料:裁判文书50篇条文释义相关论文10篇)

第一百八十八条 【动产抵押效力】 以本法第一百八十条第一款第四项、第六项规定的财产或者第五项规定的正在建造的船舶、航空器抵押的，抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。

(相关资料:部门规章1篇地方法规2篇裁判文书10篇条文释义相关论文9篇)

第一百八十九条 【动产浮动抵押登记】 企业、个体工商户、农业生产经营者以本法第一百八十一条规定的动产抵押的，应当向抵押人住所地的工商行政管理部门办理登记。抵押权自抵押合同生效时设立；未经登记，不得对抗善意第三人。依照本法第一百八十一条规定抵押的，不得对抗正常经营活动中已支付合理价款并取得抵押财产的买受人。

(相关资料:部门规章1篇地方法规2篇条文释义相关论文15篇)

第一百九十条 【抵押权和租赁权关系】 订立抵押合同前抵押财产已出租的，原租赁关系不受该抵押权的影响。抵押权设立后抵押财产出租的，该租赁关系不得对抗已登记的抵押权。

(相关资料:裁判文书5篇条文释义相关论文6篇)

第一百九十一条 【抵押期间转让抵押财产】 抵押期间，抵押人经抵押权人同意转让抵押财产的，应当将转让所得的价款向抵押权人提前清偿债务或者提存。转让的价款超过债权数额的部分归抵押人所有，不足部分由债务人清偿。抵押期间，抵押人未经抵押权人同意，不得转让抵押财产，但受让人代为清偿债务消灭抵押权的除外。

(相关资料:案例1篇裁判文书7篇条文释义相关论文4篇)

第一百九十二条 【抵押权转让或者作为其他债权担保】 抵押权不得与债权分离而单独转让或者作为其他债权的担保。债权转让的，担保该债权的抵押权一并转让，但法律另有规定或者当事人另有约定的除外。

(相关资料:司法解释1篇裁判文书4篇条文释义相关论文4篇)



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Article 193 In case any act of the mortgagor may sufficiently result in lowering the value of the property under mortgage, the mortgagee shall be entitled to request the mortgagor to stop such act. In case the value of the property under mortgage has been affected, the mortgagee shall be entitled to request the mortgagor to restore the value of the property under mortgage, or provide a security equal to the decreased value. In case the mortgagor neither restores the value of the property under mortgage nor provides any security, the mortgagee shall be entitled to request the mortgagor to pay off the debts in advance.

Article 194 A mortgagee may waive the right to mortgage or the sequence of the right to mortgage. A mortgagee and a mortgagor may change the sequence of the right to mortgage or the amount of obligee's rights as secured, etc., through negotiations, however, the change of the right to mortgage without the written consent of other mortgagees shall not produce unfavorable influences on any other mortgagee. In case an obligor establishes the mortgage by his own properties, and the mortgagee waives the right to mortgage or the sequence of the right to mortgage or changes the right to mortgage, other security providers shall be exempted from the security liability within the scope for which the said mortgagee has lost the right to seek preferred payments, unless any of other security providers promises to provide the same security.

Article 195 When the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the mortgagee may, by concluding an agreement with the mortgagor, convert the property under mortgage into money or seek preferred payments from the money incurred from the auction or sale of the property under mortgage. In case the said agreement has damaged the interests of any other obligee, the obligee may request the people's court to cancel this agreement within one year after he/it has known or should know the cause for cancellation. In case the mortgagee and the mortgagor fail to conclude an agreement on the means of realizing the right to mortgage, the mortgagee may request the people's court to auction or sell off the property under mortgage. The property under mortgage shall be converted into cash or be sold off by referring to its market price.

Article 196 With respect to the mortgage established according to Article 181 of this Law, the property under mortgage shall be determined when any of the following circumstances occurs:

- (1) The obligee's rights have not been fulfilled upon expiration of the time limit for paying debts;
- (2) The mortgagor has been declared bankrupt or has been dissolved;
- (3) Any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs; or
- (4) Any other circumstance that will seriously affect the realization of obligee's rights.

Article 197 When the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, and the property under mortgage is thus seized by the people's court according to law, the mortgagee may, as of the date of seizure, be entitled to collect natural or statutory derivatives of the property under mortgage, unless the mortgagee has failed to notify the obligor to pay off statutory fruits. The "derivatives" as prescribed in the preceding paragraph shall be used for paying the expenses for the collection of fruits in the first place.

Article 198 After the property under mortgage has been converted into money, auctioned or sold off, the value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

Article 199 If a same property is mortgaged to two or more obligees simultaneously, the money incurred from the auction or sale of the property under mortgage shall be used as payments in light of the following prescriptions:

- (1) If all the rights to mortgage have been registered, the payments shall be made in light of the sequence of registration; and if the sequence of registration is the same, the payments shall be made in light of the proportion of obligee's rights;
- (2) The right to mortgage that has been registered shall be cleared off prior to the one that has not been registered; and
- (3) If no right to mortgage has been registered, the payments shall be made in light of the proportion of obligee's rights.

Article 200 After the right to use land for construction is mortgaged, the newly-constructed buildings on the land shall not belong to the properties under mortgage. When the aforesaid right to use land for construction needs to be disposed of for the realization of the right to mortgage, the newly-constructed buildings on the land can be disposed of together, however, the mortgagee shall not be entitled to seek preferred payments from the money incurred from the disposal of these newly-constructed buildings.

Article 201 In case the right to the contracted management of land prescribed in Item (3) of Paragraph 1 of Article 180 of this Law is mortgaged, or the right to use land for construction occupied by the plant or any

【抵押财产毁损或者价值减少时的处理】抵押人的行为足以使抵押财产价值减少的,抵押权人有权要求抵押人停止其行为。抵押财产价值减少的,抵押权人有权要求恢复抵押财产的价值,或者提供与减少的价值相应的担保。抵押人不恢复抵押财产的价值也不提供担保的,抵押权人有权要求债务人提前清偿债务。

(相关资料:条文释义)

【抵押权人放弃抵押权、抵押权的顺位及变更】抵押人可以放弃抵押权或者抵押权的顺位。抵押权人与抵押人可以协议变更抵押权顺位以及被担保的债权数额等内容,但抵押权的变更,未经其他抵押权人书面同意,不得对其他抵押权人产生不利影响。债务人以自己的财产设定抵押,抵押权人放弃该抵押权、抵押权顺位或者变更抵押权的,其他担保人在抵押权人丧失优先受偿权益的范围内免除担保责任,但其他担保人承诺仍然提供担保的除外。

(相关资料:裁判文书3篇条文释义相关论文5篇)

【抵押权实现的条件、方式和程序】债务人不履行到期债务或者发生当事人约定的实现抵押权的情形,抵押权人可以与抵押人协议以抵押财产折价或者以拍卖、变卖该抵押财产所得的价款优先受偿。协议损害其他债权人利益的,其他债权人可以在知道或者应当知道撤销事由之日起一年内请求人民法院撤销该协议。抵押权人与抵押人未就抵押权实现方式达成协议的,抵押权人可以请求人民法院拍卖、变卖抵押财产。抵押财产折价或者变卖的,应当参照市场价格。

(相关资料:裁判文书24篇条文释义相关论文17篇)

【抵押财产确定】依照本法第一百八十一条规定设定抵押的,抵押财产自下列情形之一发生时确定:

- (一) 债务履行期届满,债权未实现;
 - (二) 抵押人被宣告破产或者被撤销;
 - (三) 当事人约定的实现抵押权的情形;
 - (四) 严重影响债权实现的其他情形。
- (相关资料:条文释义相关论文5篇)

【抵押财产孳息】债务人不履行到期债务或者发生当事人约定的实现抵押权的情形,致使抵押财产被人民法院依法扣押的,自扣押之日起抵押权人有权收取该抵押财产的天然孳息或者法定孳息,但抵押权人未通知应当清偿法定孳息的义务人的除外。前款规定的孳息应当先充抵收取孳息的费用。

(相关资料:条文释义)

【抵押财产变现后的处理】抵押财产折价或者拍卖、变卖后,其价款超过债权数额的部分归抵押人所有,不足部分由债务人清偿。

(相关资料:裁判文书20篇条文释义)

【抵押权清偿顺序】同一财产向两个以上债权人抵押的,拍卖、变卖抵押财产所得的价款依照下列规定清偿:

- (一) 抵押权已登记的,按照登记的先后顺序清偿;顺序相同的,按照债权比例清偿;
 - (二) 抵押权已登记的先于未登记的受偿;
 - (三) 抵押权未登记的,按照债权比例清偿。
- (相关资料:司法解释1篇条文释义相关论文9篇)



【以建设用地使用权抵押的特别规定】建设用地使用权抵押后,该土地上新增的建筑物不属于抵押财产。该建设用地使用权实现抵押权时,应当将该土地上新增的建筑物与建设用地使用权一并处分,但新增建筑物所得的价款,抵押权人无权优先受偿。

(相关资料:裁判文书1篇条文释义相关论文6篇)

【抵押权实现的特别规定】依照本法第一百八十条第一款第三项规定的土地承包经营权抵押的,或

other building of a township or village enterprise is mortgaged according to Article 183 of this Law, after the right to mortgage is realized, no nature of land ownership or land use may be changed without completing the statutory procedures.

Article 202 A mortgagee shall exercise the right to mortgage within the limitation of action for the principal obligee's rights, otherwise, such right to mortgage will not be protected by the people's court.

Section 1 Right to Mortgage at Maximum Amount

Article 203 An obligor or third party may, for the security of payment of debts, provide security of mortgage to the obligee for the obligee's rights that will continuously occur within a certain term, and when the obligor fails to pay its/his due debts or any circumstance for realizing the right to mortgage as stipulated by the parties concerned occurs, the mortgagee shall be entitled to seek preferred payments from the security properties within the maximum amount of obligee's rights.

The obligee's rights that have existed before the right to mortgage at maximum amount is established may be incorporated into the scope of obligee's rights under the security by mortgage at maximum amount.

Article 204 In case part of obligee's rights are transferred before the security by mortgage at maximum amount is established, the right to mortgage at maximum amount shall not be transferred, unless it is otherwise stipulated by the parties concerned.

Article 205 Before the obligee's rights under the security by mortgage at maximum amount are determined, the mortgagee and the mortgagor may change the term for determining the obligee's rights, the scope of obligee's rights or the maximum amount of obligee's rights by agreement, however, such change shall not produce any unfavorable influence on any other mortgagee.

Article 206 If any of the following circumstances occurs, the mortgagee's obligee's rights shall be determined:

- (1) The term for determining the obligee's rights as stipulated expires;
- (2) There is no stipulation about the term for determining the obligee's rights or the relevant stipulations are unclear, and the mortgagee or the mortgagor requests to determine the obligee's rights after two years as of the date for establishing the right to mortgage at maximum amount;
- (3) No new obligee's right may occur;
- (4) The property under mortgage is sealed up or seized;
- (5) The obligor or the mortgagor is announced as bankrupt or is revoked; or
- (6) Any other circumstance for determining the obligee's rights as prescribed by any other law occurs.

Article 207 The right to mortgage at maximum amount shall be applicable to the provisions on general right to mortgage as prescribed in Section 1 of this Chapter in addition to the provisions in this Section.

Chapter XVII Right of Pledge

Section 1 Pledge of Movable Properties

Article 208 An obligor or third party may, for the security of the payment of debts, pledge his (its) movable properties to the obligee for possession, and when the obligor fails to pay due debts or any circumstance for realizing the right of pledge as stipulated by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the said movable properties.

The 'debtor' or 'third party' as prescribed in the preceding paragraph shall be the pledger, the 'obligee' shall be the pledgee, and the 'movable properties' as delivered shall be the pledge.

者依照本法第一百八十三条规定以乡镇、村企业的厂房等建筑物占用范围内的建设用地使用权一并抵押的, 实现抵押权后, 未经法定程序, 不得改变土地所有权的性质和土地用途。

(相关资料:条文释义相关论文3篇)

第二百零二条 【抵押权存续期间】抵押权人应当在主债权诉讼时效期间行使抵押权; 未行使的, 人民法院不予保护。

(相关资料:司法解释1篇案例1篇裁判文书7篇条文释义相关论文7篇)

第二节 最高额抵押权

第二百零三条 【最高额抵押的概念】为担保债务的履行, 债务人或者第三人对一定期间内将要连续发生的债权提供担保财产的, 债务人不履行到期债务或者发生当事人约定的实现抵押权的情形, 抵押权人有权在最高债权额限度内就该担保财产优先受偿。

最高额抵押权设立前已经存在的债权, 经当事人同意, 可以转入最高额抵押担保的债权范围。

(相关资料:地方法规1篇裁判文书32篇条文释义相关论文3篇)

第二百零四条 【最高额抵押所担保的主债权以及最高额抵押权转让】最高额抵押担保的债权确定前, 部分债权转让的, 最高额抵押权不得转让, 但当事人另有约定的除外。

(相关资料:裁判文书1篇条文释义相关论文2篇)

第二百零五条 【抵押权人与抵押人协议变更最高额抵押的有关内容】最高额抵押担保的债权确定前, 抵押权人与抵押人可以通过协议变更债权确定的期间、债权范围以及最高债权额, 但变更的内容不得对其他抵押权人产生不利影响。

(相关资料:条文释义相关论文1篇)

第二百零六条 【最高额抵押权所担保债权确定事由】有下列情形之一的, 抵押权人的债权确定:

- (一) 约定的债权确定期间届满;
- (二) 没有约定债权确定期间或者约定不明确, 抵押权人或者抵押人自最高额抵押权设立之日起满二年后请求确定债权;
- (三) 新的债权不可能发生;
- (四) 抵押财产被查封、扣押;
- (五) 债务人、抵押人被宣告破产或者被撤销;

(六) 法律规定债权确定的其他情形。

(相关资料:部门规章1篇地方法规1篇裁判文书6篇条文释义相关论文3篇)

第二百零七条 【最高额抵押权适用一般抵押权相关条款】最高额抵押权除适用本节规定外, 适用本章第一节一般抵押权的规定。

(相关资料:裁判文书5篇条文释义)

第十七章 质权

第一节 动产质权

第二百零八条 【动产质权基本权利】为担保债务的履行, 债务人或者第三人将其动产出质给债权人占有的, 债务人不履行到期债务或者发生当事人约定的实现质权的情形, 债权人有权就该动产优先受偿。

前款规定的债务人或者第三人为出质人, 债权人为质权人, 交付的动产为质押财产。

(相关资料:裁判文书9篇条文释义相关论文2篇)



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Article 209 The movable properties prohibited to be pledged by any law or administrative regulation shall not be pledged.

Article 210 For the creation of the right of pledge, the parties concerned shall conclude a contract on the right of pledge in written form.

A contract on the right of pledge shall generally include the following clauses:

- (1) The variety and amount of the principal obligee's rights;
- (2) The time limit for the obligor to pay off debts;
- (3) The name, amount, quality and condition of the pledge;
- (4) The range of security; and
- (5) The time for the transfer of pledge.

Article 211 Before the time limit for paying debts expires, the pledgee and the pledger shall not stipulate that the ownership of pledge be transferred to the obligee when the obligor fails to pay due debts.

Article 212 The right of pledge shall be established after the pledgee has transferred the pledge.

Article 213 A pledgee shall be entitled to obtain the derivatives of the pledge, unless it is otherwise stipulated in the contract.

The "derivatives" as prescribed in the preceding paragraph shall be used for paying the expenses for the collection of the derivatives in the first place.

Article 214 In case a pledgee, within the duration of the right of pledge, illegally uses or disposes of the pledge without consent of the pledger, and thus causes damages to the pledger, he/it shall be liable for compensations.

Article 215 A pledgee shall be liable for properly keeping the pledge; and in case the pledge is destroyed or lost due to improper keeping, the pledgee shall be liable for compensations. In case any act of the pledgee may make the pledge damaged or lost, the pledger may require the pledgee to submit the pledge to a competent authority or require to the payment of debts in advance and take back the pledge.

Article 216 In case any cause not attributable to the fault of the pledgee may result in the destruction of the pledge or an evident decrease of the value of the pledge, and which is sufficient to damage the rights of the pledgee, the pledgee shall be entitled to request the pledger to provide corresponding security. In case the pledger refuses to do so, the pledgee may make the pledge auctioned or sold off the pledge, and may, by concluding an agreement with the pledger, seek preferred payments for the obligee's rights in advance with the money incurred from the auction or sell-off of the pledge, or submit the said money to a competent authority.

Article 217 In case a pledgee transfers the pledge within the duration of the right of pledge without consent of the pledger, and thus causes the destroy or loss of the pledge, he shall be liable for making compensations to the pledger.

Article 218 A pledgee may waive the right of pledge. In case an obligor establishes the right of pledge by own properties, and the pledgee waives the right of pledge, other security providers will be exempted from the security liability within the scope for which the pledgee has lost the right to seek preferred payments, unless any of other security providers promises to provide the security all the same.

Article 219 In case the obligor has paid off the debts or the pledger has fulfilled the obligee's rights as secured in advance, the pledgee shall return the pledge. In case an obligor fails to pay off its due debts or any circumstance for realizing the right of pledge as stipulated by the parties concerned occurs, the pledgee may, by concluding an agreement with the pledger, convert the pledge into money or seek preferred payments from the money incurred from the auction or sell-off of the pledge. The pledge shall be converted into money or be sold off by referring to its market price.

Article 220 A pledger may require the pledgee to timely exercise the right of pledge upon expiration of the time limit for paying debts; in case the pledgee fails to do so, the pledger may request the people's court to auction or sell off the pledge.

第二百零九条 【禁止出质的动产】法律、行政法规禁止转让的动产不得出质。

(相关资料:条文释义相关论文5篇)

第二百一十条 【质权合同】设立质权,当事人应当采取书面形式订立质权合同。

质权合同一般包括下列条款:

- (一) 被担保债权的种类和数额;
 - (二) 债务人履行债务的期限;
 - (三) 质押财产的名称、数量、质量、状况;
 - (四) 担保的范围;
 - (五) 质押财产交付的时间。
- (相关资料:条文释义)

第二百一十一条 【禁止流质】质权人在债务履行期限届满前,不得与出质人约定债务人不履行到期债务时质押财产归债权人所有。

(相关资料:条文释义)

第二百一十二条 【动产质权设立】质权自出质人交付质押财产时设立。

(相关资料:裁判文书4篇条文释义相关论文3篇)

第二百一十三条 【质权人孳息收取权】质权人有收取质押财产的孳息,但合同另有约定的除外。

前款规定的孳息应当先充抵收取孳息的费用。

(相关资料:条文释义相关论文1篇)

第二百一十四条 【质权人对质物使用处分的限制及法律责任】质权人在质权存续期间,未经出质人同意,擅自使用、处分质押财产,给出质人造成损害的,应当承担赔偿责任。

(相关资料:裁判文书1篇条文释义相关论文2篇)

第二百一十五条 【质权人妥善保管质物义务】质权人负有妥善保管质押财产的义务;因保管不善致使质押财产毁损、灭失的,应当承担赔偿责任。

质权人的行为可能使质押财产毁损、灭失的,出质人可以要求质权人将质押财产提存,或者要求提前清偿债务并返还质押财产。

(相关资料:条文释义)

第二百一十六条 【质物保全】因不能归责于质权人的事由可能使质押财产毁损或者价值明显减少,足以危害质权人权利的,质权人有权要求出质人提供相应的担保;出质人不提供的,质权人可以拍卖、变卖质押财产,并与出质人通过协议将拍卖、变卖所得的价款提前清偿债务或者提存。

(相关资料:条文释义相关论文3篇)

第二百一十七条 【转质权】质权人在质权存续期间,未经出质人同意转质,造成质押财产毁损、灭失的,应当向出质人承担赔偿责任。

(相关资料:条文释义相关论文2篇)

第二百一十八条 【质权放弃及其他担保人责任承担原则】质权人可以放弃质权。债务人以自己的财产出质,质权人放弃该质权的,其他担保人在质权人丧失优先受偿权益的范围内免除担保责任,但其他担保人承诺仍然提供担保的除外。

(相关资料:条文释义相关论文2篇)

第二百一十九条 【质物返还及质权实现】债务人履行债务或者出质人提前清偿所担保的债权的,质权人应当返还质押财产。

债务人不履行到期债务或者发生当事人约定的实现质权的情形,质权人可以与出质人协议以质押财产折价,也可以就拍卖、变卖质押财产所得的价款优先受偿。

质押财产折价或者变卖的,应当参照市场价格。

(相关资料:裁判文书1篇条文释义相关论文5篇)

第二百二十条 【及时行使质权请求权及怠于行使质权的责任】出质人可以请求质权人在债务履行期限届满后及时行使质权;质权人不行使的,出质人可以请求人民法院拍卖、变卖质押财产。

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In case a pledger requires the pledgee to timely exercise the right of pledge, but the pledgee is lazy to exercise such right and thus causes the damages, the pledgee shall be liable for compensations.

Article 221 After the pledge is converted into cash, auctioned or sold off, the value exceeding the obligee's rights shall belong to the mortgagor, and the gap shall be paid off by the obligor.

Article 222 The pledger and the pledgee may establish the right of pledge of maximum amount through negotiations.

The right of pledge of maximum amount shall be governed by the relevant provisions prescribed in this Section, and also be governed by the provisions on the right to mortgage at maximum amount prescribed in Section 1 of Chapter 16 of this Law by analogy.

Section 1 Pledge of Rights

Article 223 The following rights which an obligor or third party has the right to dispose of may be pledged:

- (1) Money orders, checks, and cashier's checks;
- (2) Securities and deposit receipts;
- (3) Warehouse receipts and bills of lading;
- (4) Transferable fund units and stock rights;
- (5) Exclusive trademark rights, patent rights, copyrights or other property rights in intellectual property that can be transferred;
- (6) Account receivables; and
- (7) Other property rights that can be pledged according to any law or administrative regulation.

Article 224 As for the pledge of a money order, check, cashier's check, securities, deposit receipt, warehouse receipt or bill of lading, the parties concerned shall conclude a written contract. The right of pledge shall be established after the title certificate of the pledge has been transferred to the pledgee. If there is no title certificate, the right of pledge shall be established after the relevant department has registered the pledge.

Article 225 If the date of redemption or delivery of the money order, check, cashier's check, securities, deposit receipt, warehouse receipt or bill of lading before the deadline of principal obligee's rights, the pledgee may make redemption or pick up the goods, and may, by concluding an agreement with the pledger, seek preferred payments in advance with the money redeemed or the goods picked up, or submit the said money or goods to a competent authority for keeping.

Article 226 As for the pledge of fund units or stock rights, the parties concerned shall conclude a written contract. As for the pledge of fund units or the stock rights registered in the securities depository and clearing institution, the right of pledge shall be established after the securities depository and clearing institution has registered the pledge. As for the pledge of other stock rights, the right of pledge shall be established after the administrative department for industry and commerce has registered the pledge. After the fund units or stock rights have been pledged, they shall not be transferred, unless it is otherwise agreed to by the pledger and the pledgee upon negotiations. The pledger shall fulfill the obligee's rights to the pledgee in advance with the money incurred from the transfer of fund units or stock rights, or submit the aforesaid money to a competent authority for keeping.

Article 227 In the case of the pledge of registered trademark rights, patent rights, copyrights or other property rights in the intellectual property, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant competent authority has registered the pledge. After the property rights in the intellectual property have been pledged, the pledger shall not transfer the pledge or permit anyone else to use it, unless it is otherwise agreed to between the pledger and the pledgee after negotiations. The pledger shall use the money incurred from transferring the pledged intellectual property or permitting anyone else to use it to fulfill the obligee's rights in advance, or submit the aforesaid money to a competent authority for keeping.

Article 228 As for the pledge of receivables, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant credit rating institution has registered the pledge. After the receivables have been pledged, the pledger shall not transfer the pledge, unless it is otherwise agreed on by the pledger and the pledgee upon negotiations. The pledger shall use the money incurred

出质人请求质权人及时行使质权，因质权人怠于行使权利造成损害的，由质权人承担赔偿责任。

(相关资料:裁判文书1篇条文释义相关论文5篇)

第二百二十一条 【质物变价款归属原则】 质押财产折价或者拍卖、变卖后，其价款超过债权数额的部分归出质人所有，不足部分由债务人清偿。

(相关资料:裁判文书1篇条文释义相关论文1篇)

第二百二十二条 【最高额质权】 出质人与质权人可以协议设立最高额质权。最高额质权除适用本节有关规定外，参照本法第十六章第二节最高额抵押权的规定。

(相关资料:条文释义相关论文2篇)

第二节 权利质权

第二百二十三条 【可以出质的权利范围】 债务人或者第三人有权处分的下列权利可以出质：

- (一) 汇票、支票、本票；
 - (二) 债券、存款单；
 - (三) 仓单、提单；
 - (四) 可以转让的基金份额、股权；
 - (五) 可以转让的注册商标专用权、专利权、著作权等知识产权中的财产权；
 - (六) 应收账款；
 - (七) 法律、行政法规规定可以出质的其他财产权利。
- (相关资料:司法解释1篇裁判文书3篇条文释义相关论文18篇)

第二百二十四条 【以汇票等出质的质权设立】 以汇票、支票、本票、债券、存款单、仓单、提单出质的，当事人应当订立书面合同。质权自权利凭证交付质权人时设立；没有权利凭证的，质权自有关部门办理出质登记时设立。

(相关资料:条文释义相关论文14篇)

第二百二十五条 【质人行使权利的特别规定】 汇票、支票、本票、债券、存款单、仓单、提单的兑现日期或者提货日期先于主债权到期的，质权人可以兑现或者提货，并与出质人协议将兑现的价款或者提取的货物提前清偿债务或者提存。

(相关资料:条文释义相关论文2篇)

第二百二十六条 【以基金份额、股权出质权利质权的设立和出质人处分基金份额、股权的限制】 以基金份额、股权出质，当事人应当订立书面合同。以基金份额、证券登记结算机构登记的股权出质，质权自证券登记结算机构办理出质登记时设立；以其他股权出质，质权自工商行政管理部门办理出质登记时设立。

基金份额、股权出质后，不得转让，但经出质人与质权人协商同意的除外。出质人转让基金份额、股权所得的价款，应当向质权人提前清偿债务或者提存。

(相关资料:地方法规1篇裁判文书4篇条文释义相关论文5篇)

第二百二十七条 【以知识产权中的财产权出质的权利质权的设立和出质人处分知识产权的限制】 以注册商标专用权、专利权、著作权等知识产权中的财产权出质的，当事人应当订立书面合同。质权自有关主管部门办理出质登记时设立。

知识产权中的财产权出质后，出质人不得转让或者许可他人使用，但经出质人与质权人协商同意的除外。出质人转让或者许可他人使用出质的知识产权中的财产权所得的价款，应当向质权人提前清偿债务或者提存。

(相关资料:裁判文书2篇条文释义相关论文3篇)

第二百二十八条 【以应收账款出质的权利质权的设立和出质人转让应收账款的限制】 以应收账款出质的，当事人应当订立书面合同。质权自信贷征信机构办理出质登记时设立。



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form the transfer of accounts receivable to fulfill the obligee's rights in advance, or submit the aforesaid money to a competent authority.

Article 229 The pledge of rights shall be governed by the provisions on the pledge of movable properties prescribed in Section 1 of this Chapter in addition to the provisions prescribed in this Section.

Chapter XVIII Lien

Article 230 In case an obligor (debtor) fails to pay its due debts, the obligee (creditor) may take the lien of the obligor's movable properties he has lawfully possessed, and be entitled to seek preferred payments from these movable properties.

The 'obligee' prescribed in the preceding Paragraph shall be the lienor (lien holder), and the 'movable properties' as occupied shall be the property under lien.

Article 231 The movable properties taken as lien by the obligee shall fall into a same legal relationship with the obligee's rights, except for the lien between the enterprises.

Article 232 No lien may be taken if any law prohibits to do so or the parties concerned stipulate not to do so.

Article 233 In case a property under lien is a divisible object, the value of the property under lien shall be equal to the amount of debts.

Article 234 A lienor shall be obliged to properly keep the property under lien, and shall be liable for compensations if the property under lien is damaged or lost due to improper keeping.

Article 235 A lienor shall be entitled to obtain the fruits of the property under lien. The 'fruits' prescribed in the preceding paragraph shall be used for paying off the expenses for the collection of the fruits in the first place.

Article 236 A lienor shall stipulate the term for fulfilling the obligee's rights with the obligor after the property is taken as lien; and in case there is no such stipulation or such stipulations are unclear, the lienor shall give two months or more to the obligor for him (it) to fulfill the obligee's rights, except for fresh goods, perishable goods or those movable properties that are not easy to be kept. In case the obligor fails to fulfill the obligee's rights within the time limit, the lienor may, by concluding an agreement with the obligor, convert the property under lien into money, or seek preferred payments from the money incurred from the auction or sell-off the property under lien. The property under lien shall be converted into money or sold off by referring to its market price.

Article 237 An obligor may request the lienor to exercise the lien upon expiration of the time limit for fulfilling the obligee's rights; and in case the lienor fails to do so, the obligor may request the people's court to auction or sell off the property under lien.

Article 238 After the property under lien is converted into money, auctioned or sold off, the value exceeding the obligee's rights shall belong to the obligor, and the gap shall be paid off by the obligor.

Article 239 In case the right to mortgage or the right of pledge has been established on a movable property, and this movable property is taken as lien again, the lienor shall be entitled to seek preferred payments.

Article 240 In case a lienor loses the possession of the property under lien or accepts other security separately provided by the obligor, the lien shall perish.

Part Five Possession

应收账款出质后，不得转让，但经出质人与质权人协商同意的除外。出质人转让应收账款所得的价款，应当向质权人提前清偿债务或者提存。

(相关资料:司法解释1篇裁判文书4篇条文释义相关论文7篇)

第二百二十九条 【权利质权适用动产质权的规定】权利质权除适用本节规定外，适用本章第一节动产质权的规定。

(相关资料:裁判文书1篇条文释义相关论文2篇)

第十八章 留置权

第二百三十条 【留置权的一般规定】债务人未履行到期债务，债权人可以留置已经合法占有的债务人的动产，并有权就该动产优先受偿。

前款规定的债权人为留置权人，占有的动产为留置财产。

(相关资料:裁判文书6篇条文释义相关论文4篇)

第二百三十一条 【留置财产与债权的关系】债权人留置的动产，应当与债权属于同一法律关系，但企业之间留置的除外。

(相关资料:裁判文书2篇条文释义相关论文2篇)

第二百三十二条 【留置权适用范围的限制性】法律规定或者当事人约定不得留置的动产，不得留置。

(相关资料:条文释义相关论文1篇)

第二百三十三条 【可分物作为留置财产的特殊规定】留置财产为可分物的，留置财产的价值应当相当于债务的金额。

(相关资料:条文释义)

第二百三十四条 【留置权人保管义务】留置权人负有妥善保管留置财产的义务；因保管不善致使留置财产毁损、灭失的，应当承担赔偿责任。

(相关资料:条文释义相关论文1篇)

第二百三十五条 【留置权人收取孳息的权利】留置权人有权收取留置财产的孳息。

前款规定的孳息应当先充抵收取孳息的费用。

(相关资料:条文释义)

第二百三十六条 【实现留置权的一般规定】留置权人与债务人应当约定留置财产后的债务履行期间；没有约定或者约定不明确的，留置权人应当给债务人两个月以上履行债务的期间，但鲜活易腐等不易保管的动产除外。债务人逾期未履行的，留置权人可以与债务人协议以留置财产折价，也可以就拍卖、变卖留置财产所得的价款优先受偿。

留置财产折价或者变卖的，应当参照市场价格。

(相关资料:条文释义相关论文2篇)

第二百三十七条 【债务人可请求留置权人行使留置权】债务人可以请求留置权人在债务履行期届满后行使留置权；留置权人不行使的，债务人可以请求人民法院拍卖、变卖留置财产。

(相关资料:条文释义相关论文2篇)

第二百三十八条 【留置权实现】留置财产折价或者拍卖、变卖后，其价款超过债权数额的部分归债务人所有，不足部分由债务人清偿。

(相关资料:条文释义)

第二百三十九条 【留置权与抵押权或者质权的关系】同一动产上已设立抵押权或者质权，该动产又被留置的，留置权人优先受偿。

(相关资料:条文释义相关论文4篇)

第二百四十条 【留置权消灭的原因】留置权人丧失对留置财产的占有或者留置权人接受债务人另行提供担保的，留置权消灭。

(相关资料:裁判文书1篇条文释义相关论文1篇)



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第五编 占有

Chapter XIX Possession

第十九章 占有

Article 241 With respect to the possession occurred on the basis of a contractual relationship, the use, proceedings and default liability of the relevant real property or movable property shall be governed by the stipulations in the contract; and in case there is no such stipulation in the contract or the stipulations are unclear, the relevant legal provisions shall be applied.

Article 242 In case a possessor uses the real property or movable property under his (its) possession, and causes this real property or movable property to be damaged, a malicious possessor shall be liable for compensations.

Article 243 In case a real property or movable property is possessed by a possessor, the holder may request the return of original object and its fruits, but shall pay necessary expenses to the bone fide possessor for the maintenance of this real property or movable property.

Article 244 In case a real property or movable property under possession is damaged or lost, and the holder of this real property or movable property requests for compensations, the possessor shall return the insurance money, damages or indemnities obtained from the said destruction or loss to the holder; and in case the impairment to the holder has not been sufficiently made up, a malicious possessor shall be liable for compensations.

Article 245 In case a real property or movable property under possession is encroached on, the possessor shall be entitled to demand the return of the original object (property); with respect to any act that may impair the possession, the possessor shall be entitled to require the elimination of impairment or danger; and in case any impairment is caused due to encroachment or interference, the possessor shall be entitled to ask for damages.
The claim of a possessor for returning the original object shall be exercised within one year as of the date of encroachment, otherwise, such claim shall perish.

Supplementary Provisions

Article 246 Before any law or administrative regulation prescribes the scope, organ and measures for uniform registration of real properties, a local regulation may prescribe relevant matters according to the relevant provisions in this Law.

Article 247 This Law shall come into effect as of October 1, 2007.

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第二百四十一条 【有权占有法律适用】基于合同关系等产生的占有，有关不动产或者动产的使用、收益、违约责任等，按照合同约定；合同没有约定或者约定不明确的，依照有关法律的规定。

(相关资料:裁判文书2篇条文释义相关论文5篇)

第二百四十二条 【恶意占有人应承担的赔偿责任】占有人因使用占有的不动产或者动产，致使该不动产或者动产受到损害的，恶意占有人应当承担赔偿责任。

(相关资料:裁判文书1篇条文释义相关论文3篇)

第二百四十三条 【无权占有人的返还原物及善意占有人的必要费用返还请求权】不动产或者动产被占有人占有的，权利人可以请求返还原物及其孳息，但应当支付善意占有人因维护该不动产或者动产支出的必要费用。

(相关资料:裁判文书5篇条文释义相关论文1篇)

第二百四十四条 【被占有的不动产或者动产毁损、灭失时占有人的责任】占有的不动产或者动产毁损、灭失，该不动产或者动产的权利人请求赔偿的，占有人应当将因毁损、灭失取得的保险金、赔偿金或者补偿金等返还给权利人；权利人的损害未得到足够弥补的，恶意占有人还应当赔偿损失。

(相关资料:裁判文书1篇条文释义相关论文2篇)

第二百四十五条 【占有保护】占有的不动产或者动产被侵占的，占有人有权请求返还原物；对妨害占有的行为，占有人有权请求排除妨害或者消除危险；因侵占或者妨害造成损害的，占有人有权请求损害赔偿。
占有人返还原物的请求权，自侵占发生之日起一年内未行使的，该请求权消灭。

(相关资料:裁判文书7篇条文释义相关论文5篇)

附 则

第二百四十六条 【授权地方性法规暂时规定不动产统一登记】法律、行政法规对不动产统一登记的范围、登记机构和登记办法作出规定前，地方性法规可以依照本法有关规定作出规定。

(相关资料:条文释义相关论文4篇)

第二百四十七条 【施行日期】本法自2007年10月1日起施行。

(相关资料:条文释义相关论文2篇)

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