



The New Civil Code for Everyone



ACTION FOR THE RECOVERY OF POSSESSION

- This is a means of defense in justice of the right of private property (art. 563 et seq. of the New Civil Code) and of the right of public property (art. 865 paragraph 3 of the New Civil Code)
- It represents the *action in justice available to the owner of the asset against the holder or against another person unrightfully holding the respective asset.*

Characteristics of the action for the recovery of possession in the New Civil Code

- **When can the action for the recovery of possession be filed:** the action for the recovery of possession is *imprescriptible*, i.e. it can be submitted anytime, regardless whether the claim concerns a movable or an immovable asset, except for the cases where the law provides otherwise (e.g. according to art. 937 paragraph 1 of the New Civil Code the lost or stolen movable asset can be claimed from the bona fide possessor, if the action is submitted, under the sanction of forfeiture, within 3 years from the date when the owner lost the material ownership of the asset)
- **Who can file an action for the recovery of possession:** The owner of the ownership title. As an element of novelty, as opposed to the principle of unanimity consecrated by the old regulation, in the case of co-ownership (tenancy in common), In any action regarding co-ownership, including in the case of action for the recovery of possession, each co-owner can appear alone in court, regardless of the position in the trial
- **Proof of the ownership title:** in the case of *buildings recorded in the land (real estate) register*, the proof of the ownership title is done by the excerpt from the Real Estate Register

Effects of admission of the action for the recovery of possession

- **Obligations of the defendant:** the defendant will be obliged to return the asset or to pay damages, evaluated in relation with the moment of the return, if the asset has perished by his/her fault or was alienated; also, in the same terms, the defendant will be obliged to return the products or their value counter value
 - The defendant, as mala fide holder or the precarious owner will be obliged, on request from the plaintiff, also to return the fruits produced by the asset until its return to the owner.
- **Obligations to return the of the plaintiff:** on request from the defendant, the owner can be obliged to return to the holder the necessary expenses the latter has incurred, the useful expenses, within the limit of the increase in value, if the law does not provide otherwise, as well as the necessary expenses for the production and harvest of the fruit or produce.

Project „The Codes Are Coming!”

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- the owner is not obliged to cover the expenses made of his/her free will; the holder is entitled to retain the works performed through these expenses only if the asset is not damaged thereby
- in case the necessary, useful or freely made expenses turn into a new object, one cannot request their return, in these cases apply the provisions in matters of (artificial real estate) accession.
- **lien of the defendant:** the defendant is entitled to a lien on the products until the recovery of the expenses incurred for their production and harvest, except for the case when the owner delivers the defendant a sufficient guarantee.
- **opposability of the decision:** the judicial decision by which the action for the recovery of possession is admitted is opposable and may also be carried out against the acquirer third party, according to the Civil Procedure Code.

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