



The New Civil Code for Everyone



THE DISMEMBERMENTS OF THE OWNERSHIP RIGHTS

- The dismemberments of the ownership rights are regulated in the New Civil Code in the **title III, art. 693-772**. These are the following:
 - the right of superficies
 - the right of beneficial interest (usufruct);
 - the right of use and enjoyment;
 - the homestead right;
 - the easement right (right of way).
- The New Civil Code does not also include a definition of „the dismemberments of the ownership rights”, however according to the doctrine these represent the *non-ancillary rights in rem, derived from the right of private property on an asset owned by another person, which is established or acquired by transfer of certain elements of the legal contents of the right of property on the respective asset by another person, or by exertion of those elements by the owner of the asset and another person.*

The right of superficies

- **Regulation:** The right of superficies is an institution expressly regulated in the New Civil Code, respectively in art. **693-702 New Civil Code**
- **Definition:** the right to have or to erect a building on someone other's land, above or under ground of that land, on which the superficiary acquires a right of use (art. 693).
- **The characteristics** of the right of superficies: *principal real property right* (it can be established only on immovable assets), *a derived right* (it is the result of the dismemberment of the ownership right on the land), *a temporary right* (the maximum duration of the term of superficies is of 99 years, with possibility of renewal at the expiration of the term, according to art. 694 the New Civil Code).
- **The acquisition of the right of superficies**, according to the regulation of the New Civil Code, can be made by a legal document (a unilateral deed, such as a will (testament), or by agreement), as well as by usucaption or by another means provided by the law. In all cases the provisions related to the Land Register apply.
- **Extent and exertion of the right of superficies:** The right of superficies is exerted within the limits and under the terms of the founding document. In absence of a contrary stipulation, the exertion of the right of superficies is limited by the plot of land which is to be built and by the one necessary to exploit the construction or, as the case may be, by the pertaining land surface and by the one necessary in order to exploit the erected building. (art. 695 paragraph 1. New Civil Code).
- Special provisions concern the **interdiction to modify the construction** for the holder of the right of superficies, the latter being subject to the obligation, in case of reconstruction, to maintain the initial form. In case of infringement of these dispositions, the owner of the land may require, within three years, the cessation of the superficies or the restoration to the previous situation.
- **Defense of the right of superficies:** The right of superficies may be defended by the *confessory*

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pleading in superficies, an action which can be initiated against any person, even against the owner of the land, if he/she prevents the exertion of the right. The right to legal action is imprescriptible.

- **Establishment of superficies for good and valuable consideration - Evaluation of the performance of the superfiary:** In case the superficies was established for good and valuable consideration, if the parties have not provided for other manners of payment of the performance by the superfiary, the holder of the right of superficies owes, as monthly installments, an amount equal to the rent established on the free market, taking into account the nature of the land, the destination of the construction in case it exists, the area where lands is situated, as well as any other criteria to establish the counter-value of the use. In case of disagreements between the parties, the amount due to the owner of the land will be established in a court of law (art. 697).
- **Cessation of the superficies:** The right of superficies extinguishes by cancellation in the Land Register for one of the following causes:
 - on expiry of the term;
 - by consolidation, if the ground and the construction become property of one and the same person;
 - by perishing of the construction, if there is an express stipulation to that effect;
 - otherwise, as provide by law.
- **Effects of the cessation of the superficies:** In absence of a contrary stipulation, the owner of the land becomes the owner of the construction built by the superfiary, by accession, on condition to pay for the building at the market value of the date of expiry of the term. There is also the possibility, in case the building is much more valuable than the ground, for the owner of the land to determine the superfiary to buy the plot of land at market value.

The right of beneficial interest

- **Regulation:** The right of beneficial interest is regulated in art. 703–748 of the New Civil Code.
- **Definition:** „The usufruct is the right to use the asset of another person and to reap the fruits thereof exactly like the owner, but with the duty to conserve its substance....”.
- **The acquisition of the right of beneficial interest (usufruct):** Usufruct can be established by a legal document, usucaption or in other ways as provided by law, the provisions in matters of Land Register being applicable. The beneficial interest can be established only in favor of an existing person.
- **The object of the right of beneficial interest (usufruct):** any movable and immovable assets, *tangible or intangible, including the total property assets, a universality of fact or a share thereof.* The assets of the public domain cannot be object of the right of beneficial interest. In the New Civil Code special provisions have expressly been introduced regarding the usufruct on *receivables*, including on a *life annuity*, on shares or *equity interests*, as well as the *usufruct on the goodwill* (art. 737-745 New Civil Code).
- **Defense of the right of beneficial interest:** This right can be defended by *confessory pleading*, under the same terms as it can be exerted in the case of superficies.
- **Duration of the usufruct:** Usufruct *in favor of a natural person* is at most for life. The usufruct established *in favor of a legal person* can have a duration of at most 30 years. When it is established in excess of that term, usufruct is reduced by right to 30 years. If no duration is provided for the usufruct, it is presumed to be for life or, as the case may be, to be established on a duration of 30 years. The usufruct established until the date when another person reaches a certain age lasts until that date, even if that person dies before reaching the established age.
- **The rights of the beneficial owner** are:
 - the exclusive use of the asset, including the right to reap its fruits (natural, industrial, civil and even products);
 - to request and obtain the delivery of the asset;
 - to dispose, as a good owner, of the assets which, without being consumable, deteriorate fast by use. In this case, at the end of the usufruct, the beneficial owner will return the value the

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asset would have had as of this last date.

- to transfer the usufruct;
- to rent or, as the case may be, to lease the asset received in beneficial interest;
- to exploit the parts of high forests which were destined for regular cutting, whether these cuttings take place periodically on a determined area of land, or they are made only on a number of selected trees on the area of the forest fund;
- take vine props for vineyards from the forests;
- take annual or periodical products of trees, while observing the regular use of the owner, within the limits of legal provisions;
- the right on fruit trees becoming dry and on the ones accidentally fallen;
- the right on rock and sand quarries in use.
- *in case of receivables*: the right to cash the capital and to levy the interests for the receivables, the right to increase the capital, the right to vote, the right to dividends.

➤ **Duties of the beneficial owner.** These consist either in a general duty, together with all those representing the passive subject, to respect the right to bare ownership, either in certain duties of the beneficial owner, which express the special relationship between the beneficial owner and the bare owner:

- To make inventories of the movable assets and to ascertain the state of the buildings, except for the case when the beneficial interest in a movable asset is acquired by usucaption;
- To maintain the destination given to the assets by the bare owner, with the exception of the case when an increase in value of the asset is provided or at least is not detrimental in any way to the interests of the owner;
- To disburse the bare owner for any damage caused by the inadequate use of the assets entrusted for beneficial interest;
- To deposit a guarantee for the fulfillment of his/her duties;
- To perform the repairs and maintenance of the asset; large repairs are incumbent to the beneficial owner when caused by the non-performance of the maintenance repairs.
- To bear all the charges and expenses caused by litigations regarding the use of the asset, reaping of the fruit or cashing of the incomes;
- to notify immediately the bare owner on any usurpation of the fund and any denial of the ownership right, under sanction of the obligation to the payment of damages.

➤ **Rights of the bare owner.** The mentioned duties of the beneficial owner become, in the legal relationships, rights of claim of the bare owner. Such are, for instance, the right to request the drafting of an inventory, the conservation of the asset, performing maintenance repairs, right to request payment for damages, right to claim the restitution of the asset and other similar.

➤ **Duties of the bare owner.** In general, the bare owner has a general negative duty not to disturb the exertion of the right of beneficial interest. „The owner may in no way by his/her actions be harmful to the rights of beneficial owner”.

➤ **Extinction of the beneficial ownership:** The ways of extinction of the beneficial ownership, as provided in art. 746-748 the New Civil Code are seven in number, namely:

- Death, or as the case may be, cessation of the legal personality of the beneficial owner;
- Expiry of the term for which the beneficial interest was established;
- consolidation (when one and the same person acquires both the quality of owner and that of beneficial owner);
- disuse for 10 years, and in the case of receivables, 2 years;
- total loss of the asset subject to beneficial interest (usufruct);
- abuse of use;
- waiver of the beneficial owner.

The right of use and enjoyment and the homestead right

➤ **Regulation:** The rights of use and enjoyment and the homestead right are regulated in art. 749-754 of

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the New Civil Code

- **Definition:** The **use** is the right of a person to use someone other's asset and to reap its natural and industrial fruits only for their own personal needs and those of their family. The **homestead right** is the right of a person to live in the dwelling of the bare owner together with their spouse and children, even if not married or childless at the date when the right of homestead was established, as well as with their parents or other dependants.
- **Characteristics:** These two dismemberments of the ownership right differ from the beneficial interest (usufruct) because, besides the fact that they are not transferable, the transfer of the emolument is also prohibited (the benefits of the holder resulted from the exertion of the right). The holder of the respective dismemberment can only exert the right for his/her own needs and for those of their family.
- *The difference* between the right of use and enjoyment and the homestead right results from the object of these dismemberments. Thus, the homestead right is established on a dwelling, and the right of use and enjoyment on movable and immovable assets, except for dwellings.
- The right of use and enjoyment and the homestead right are subject, as regards their establishment, exertion and extinguishing, to the rules in matters of beneficial interest (usufruct).

The Easement right (Easements)

- **Regulation:** the easement right is regulated in art. 755 – art. 772 of the New Civil Code
- **Definition:** The easement is the *lien which encumbers a real property for the use or utility of the real property of another owner*. As a rule, easement supposes real properties belonging to different owners, of which one (of the real properties) is the *dominant tenement*, and the one which 'supports the easement' is the *servient tenement*. However there may be situations when the easements are reciprocal. In art. 755 paragraph (2) of the New Civil Code it is mentioned that the dominant tenement may, by establishing the easement, increase its economic usefulness or comfort.
- **Establishment:** the easement can only be established on the basis of a legal act or by usucaption.
- **Classification :**
 - *Apparent easements and non[apparent easements*, as they are marked by a visible sign (a door, a window, etc.), or not (easement not to build above a certain height);
 - *Continuous and non-continuous easements*, depending on the manner of exertion, which can be continuous, without the action of man (easement of sight) or non-continuous, which requires the effective action of man (easement of passage);
 - *Positive and negative easements*, the positive ones involving the partial exertion of some prerogatives of the ownership right on the servient fund, and the negative easements being those according to which the owner of the servient fund is obliged to refrain from the exertion of some of the prerogatives of his/her right of ownership (ex. easement not to build).
- **Duties incumbent to the owner of the servient tenement** are, mainly, those concerning the observance of obligations undertaken for the assurance of use and utility of the dominant fund as well as the recording in the Land Register, and the obligation is transmitted in this way, to the subsequent acquirers of the servient fund. As for the refraining of the owner of the servient fund from exerting the easement, this cannot prevent the owner of the servient fund to change the place by which the easement is exerted, to the extent of which the exertion of the easement remains as comfortable as for the owner of the dominant fund.
- **The rights and duties of the owner of the dominant fund** are mainly:
 - The right to take all measures and to perform on his/her own expense all the works required to exert and conserve the easement;
 - Duty not to downgrade the situation of the servient fund and not to cause any damages by exerting the easement.
- **Extinction of the easements:** Easements extinguish mainly by their cancellation from the Land Register for one of the following causes:
 - a) consolidation, when both funds come to belong to the same owner;
 - b) waiver of the owner of the dominant tenement;
 - c) maturity;

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- d) redemption;
 - e) final impossibility of exertion;
 - f) disuse for 10 years;
 - g) disappearance of any utility thereof.
- (2) The easement also extinguishes by the expropriation of the servient fund, if the easement is contrary to the public interest to which the expropriated asset will be transferred.