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Apartment Ownership and Apartment Associations Act

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Chapter 1 General Provisions

§ 1. Apartment ownership and apartment association

(1) "Apartment ownership" means exclusive ownership of the physical share of a building together with a legal share of common ownership of the immovable to which the exclusive ownership belongs.

(2) An apartment ownership shall be restricted to one immovable.

(3) The provisions of other Acts concerning immovable property ownership apply to apartment ownership in issues not regulated by this Act.

(4) "Apartment association" means a legal person in private law the members of which are all the owners of apartment ownerships of one immovable property ownership divided into apartment ownerships (hereinafter *apartment owners*).

Chapter 2 Creation of Apartment Ownerships and Apartment Association

§ 2. Methods of creation of apartment ownerships and apartment association

Apartment ownerships and the apartment association shall be created by an agreement between the co-owners on the creation of exclusive ownership or by an application for division by the owner of the immovable.

§ 3. Creation of exclusive ownership by agreement

(1) The co-owners of an immovable may agree that each co-owner shall have exclusive ownership of a dwelling or non-residential premises in the building located or to be built on the immovable.

(2) An agreement between the co-owners and the making of a corresponding entry in the land register are required for the creation of exclusive ownership.

(3) The provisions of § 120 of the Law of Property Act apply to agreements on creation of exclusive ownership.

(4) The provisions of § 119 of the Law of Property Act apply to transactions by which creation of exclusive ownership is undertaken.

§ 4. Object of exclusive ownership

(1) The object of exclusive ownership is a dwelling or non-residential premises delimited in space and parts of the building belonging thereto, which enable separate use and which can be altered, removed or added without violating common ownership or the rights of other apartment owners and without altering the external form of the building.

(2) A part of a garage with a permanent marking may also be part of an object of exclusive ownership in the composition of a dwelling or non-residential premises.

(3) Buildings or parts thereof, or equipment necessary for the preservation of a building, for ensuring safety or for common use by the apartment owners are not objects of exclusive ownership even if they are situated within the boundaries of a physical share of the building constituting the object of exclusive ownership.

(4) The objects of the shares in common ownership of apartment ownership are a plot of land and such parts and equipment of a building which do not constitute objects of exclusive ownership and are not in the ownership of a third person.

§ 5. Determination of other terms and conditions upon creation of apartment ownership

Together with an agreement on the creation of exclusive ownership, the co-owners of an immovable may enter into other agreements on the content of exclusive ownership, determine the conditions of the articles of association of the apartment association and establish the management plan of the apartment association.

§ 6. Registration of apartment ownerships and opening of registry card of apartment association

(1) A registration application to be submitted to the registrar of the land register in order to register apartment ownerships shall set out also all the information necessary for entry of the apartment association in the apartment associations register. After receiving a registration application, the registrar of the land register shall forward the application to the registrar of the apartment associations register. The registrar of the land register and the registrar of the apartment associations register shall review the application at the same time.

(2) Upon registration of apartment ownerships, an independent land register part shall be opened for each apartment ownership and at the same time the current register part for the immovable shall be closed pursuant to the procedure provided for in the Law of Property Act and the Land Register Act.

(3) Information from the closed register part shall be entered in the corresponding divisions of the new register parts. In addition to the information specified in § 12 of the Land Register Act, the registry code of the apartment association shall be indicated in the title of the register part. In addition to the information specified in subsection 13 (1) of the Land Register Act, the number or other mark of identification of the object of exclusive ownership, the size of the legal share of common ownership and the registered immovable numbers of the other apartment ownerships shall be entered in the first division of the register part.

(4) An entry on the registration of apartment ownerships shall be made after the registrar of the apartment associations register gives notification that there are no hindrances to the opening of the registry card for the apartment association. An entry on the opening of the registry card of the apartment association shall be made immediately after the making of the entry on the registration of apartment ownerships.

(5) If the registrar of the apartment associations register has set a term for the elimination of deficiencies, the processing of the registration application shall be suspended until the registrar of the apartment associations register:

- 1) gives notification pursuant to the first sentence of subsection (4) of this section; or
- 2) gives notification of failure to eliminate the deficiencies.

(6) In the case provided for in clause (5) 2) of this section, a person with registration competence shall deny the registration application by a ruling.

(7) The specific activities of the registrar of the land register and the registrar of the apartment associations register upon registration of apartment ownerships and opening of registry cards for apartment associations shall be established by a regulation of the minister responsible for the area.

§ 7. Documents appended to registration application

(1) The following documents shall be appended to a registration application in addition to the provisions of subsection 35 (1) of the Land Register Act:

- 1) a transcript, officially certified by an authority competent to issue building permits, of the plan of the building to be divided into apartment ownerships entered in the state register of construction works or of the design of the building to be built, setting out the delimited premises constituting the object of each exclusive ownership, marked with a number or other mark of identification (hereinafter *distribution plan of building*);

2) a confirmation of a person who is competent in design or expert assessment of building design documentation that the creation of exclusive ownerships in the manner indicated in the distribution plan of the building complies with the requirements provided for in § 4 of this Act.

(2) The numbers or other marks of identification used for the indication of the object of exclusive ownership in a registration application shall coincide with the marks of identification used in the distribution plan of the building.

(3) The requirements for the plan which constitutes the basis for the distribution plan of the building and for the procedure for entry thereof in the state register of construction works shall be established by a regulation of the minister responsible for the area.

§ 8. Division by owner

(1) The owner of an immovable may, by a registration application submitted to the registrar of the land register, divide the ownership into shares in the common ownership such that exclusive ownership of a dwelling or non-residential premises in the building located or to be built on the immovable corresponds to each share in the common ownership. A division is effective as of the making of an entry in the land register.

(2) In the case provided for in subsection (1) of this section, the provisions of §§ 4–7 of this Act apply.

§ 9. Amendment of agreement on exclusive ownership

(1) Upon agreement between relevant apartment owners, the extent of existing exclusive ownerships may be changed and a new apartment ownership may be created. The provisions of the Law of Property Act concerning merger and division of immovables apply to changing of the extent of exclusive ownership together with the specifications provided for in this Act.

(2) Each apartment owner may demand that another apartment owner make necessary declarations of intent for making the changes specified in subsection (1) of this section if:

- 1) maintaining the current situation would be contrary to the principle of good faith, taking into account all the circumstances;
- 2) the changes do not excessively harm the legitimate interests of any apartment owner.

(3) The situation specified in clause (2) 1) of this section is presumed to occur if the corresponding decision of the general meeting of the apartment owners receives more than one-half of all the votes by the apartment owners who own more than one-half of the shares in the common ownership.

(4) If the making of the change specified in subsection (1) of this section presumes the existence of a building permit, the apartment owner may make the making of the declarations of intent necessary for making the change dependable on the existence of the building permit.

(5) An apartment owner may demand that the person with the limited real right make the declarations of intent necessary for making the change specified in subsection (1) of this section if the change does not excessively harm the legitimate interests of the person with the limited real right.

(6) In the case provided for in subsection (3) of this section, the demands specified in subsections (2) and (5) of this section and the registration application necessary for entry of the changes in the land register may also be submitted by the apartment association.

§ 10. Demand for transfer of new apartment ownership

(1) Apartment owners may, together with the creation of a new apartment ownership, agree on the conditions of transfer thereof.

(2) Each apartment owner may demand that another apartment owner make the declarations of intent necessary for the transfer of the apartment ownership being created if:

- 1) the general meeting of the apartment owners has adopted a resolution which complies with the conditions specified in subsection 9 (3) of this Act;
- 2) the income received from transfer corresponds to the usual value of the transferred apartment ownership as at the time of the transfer;
- 3) the income received from the transfer is divided between the apartment owners according to the size of the share in common ownership of the apartment ownership or is used reasonably for maintenance or improvement of the part of common ownership of the apartment ownership.

(3) The demand specified in subsection (2) of this section may also be submitted by the apartment association.

§ 11. Specifications concerning disposal of apartment ownership

- (1) The share of exclusive ownership and the share in common ownership of apartment ownership cannot be transferred or encumbered separately.
- (2) Apartment ownership shall not be encumbered with a right of superficies.
- (3) Upon sale of an apartment ownership, the right of pre-emption of co-owners of the immovable provided for in subsection 73 (2) of the Law of Property Act does not apply.

Chapter 3 Exercise of Apartment Ownership

Division 1 General Provisions

§ 12. Principles in mutual relations

- (1) Apartment owners shall exercise the rights and perform the obligations arising from their apartment ownership to the extent provided for in this Act through the apartment association.
- (2) Apartment owners shall act in accordance with the principle of good faith and consider each other's legitimate interests in their mutual relations and in relations with the apartment association.

§ 13. Organisation of relationships upon agreement

- (1) Upon agreement, apartment owners may organise legal relationships arising from apartment ownerships and the apartment association differently than provided for in this Act, except if this is directly precluded by law.
- (2) The provisions of § 9 of this Act apply to demanding for declarations of intent necessary for entry into, amendment and termination of an agreement between apartment owners and to entry of amendments in the land register.
- (3) An agreement between apartment owners applies to a singular successor of an apartment owner only if it has been entered in the land register as content of exclusive ownership.

§ 14. Right of exclusive use

- (1) By an agreement between apartment owners, a part of the object of common ownership may be granted to the exclusive use (hereinafter *right of exclusive use*) of an actual apartment owner if this is not in conflict with the purpose of use of the part of the object of the common ownership.
- (2) The apartment owner may transfer the exercise of the right of exclusive use held thereby to a third person without the consent of all the other apartment owners.
- (3) The apartment owner may transfer the right of exclusive use held thereby to another apartment owner without the consent of all the other apartment owners.

§ 15. Apartment ownership in shared ownership

- (1) If an apartment ownership belongs to several persons jointly, these persons may only exercise the rights relating to the apartment ownership jointly. This does not apply to the apartment association if the shared ownership is not entered in the land register.
- (2) The joint owners of the apartment ownership shall be solidarily liable for the performance of the obligations arising from the apartment ownership.
- (3) If the apartment owners have not appointed a joint representative for exercise of the rights arising from the apartment ownership, a transaction concluded by the apartment association with respect to the joint apartment owners is deemed to be valid even if such act was performed with respect to only one apartment owner.

Division 2 Apartment Association

Subdivision 1

General provisions

§ 16. Legal status of apartment association

(1) The passive legal capacity of an apartment association commences as of opening of apartment ownership register parts and terminates as of closure of apartment ownership register parts in the land register.

(2) An apartment association shall not be transformed into a legal person of a different type.

§ 17. Articles of association of apartment association

(1) An apartment association may have articles of association.

(2) The articles of association may prescribe conditions which are not in conflict with law or the agreement on exclusive ownership. If a provision of the articles of association is in conflict with law, the provision of law applies. If a provision of the articles of association is in conflict with the agreement on exclusive ownership, the provision of the agreement applies.

§ 18. Seat and place of establishment of apartment association

(1) If an apartment association has no management board, the seat of the apartment association shall be the location of the apartment ownerships.

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(2) The place of establishment of an apartment association is the location of the apartment ownerships.

§ 19. Name of apartment association

(1) The name of an apartment association shall contain the address of the immovable constituting the object of the apartment ownerships and the appendage "*korteriühistu*" [apartment association].

(2) Upon a change in the address of the location of apartment ownerships in the land register, the name of the apartment association shall change correspondingly. The provisions of the second sentence of 599 of the Code of Civil Procedure shall not apply.

(3) The specific procedure for formation of names of apartment associations shall be established by a regulation of the minister responsible for the area.

(4) In addition to the name provided for in subsection (1) of this section, an apartment association may use another name (hereinafter *additional name*), provided that it distinguishes the apartment association sufficiently from all other legal persons registered in Estonia.

(5) Instead of the appendage specified in subsection (1) of this section, the abbreviation "*KÜ*" may be used in the additional name of an apartment association.

(6) No other person shall use the word "*korteriühistu*" [apartment association] or the abbreviation "*KÜ*" in its name.

(7) The documents of an apartment association shall specify the name and registry code of the apartment association. The documents shall specify the seat of the apartment association if it differs from the location of apartment ownerships.

Subdivision 2 Bodies and management of apartment association

§ 20. General meeting of apartment owners

(1) Decisions made by majority of the votes pursuant to this Act or an agreement of the apartment owners shall be adopted by the general meeting of the apartment owners. In addition to the provisions of this Act, the provisions of clauses 19 (1) 1)–5), §§ 20 and 20¹, subsections 21 (6)–(9), subsections 22 (1) and (1¹), subsections 23 (1) and (2) and § 25 of the Non-profit Associations Act concerning the general meeting of the members of a non-profit association apply to the general meeting of apartment owners.

(2) A general meeting of apartment owners has a quorum if the apartment owners participating in the meeting hold more than one-half of the votes and more than one-half of the shares in the common ownership, unless the articles of association prescribe otherwise.

(3) If the agenda of a general meeting of the apartment owners includes amendment of the articles of association, establishment of a management plan or approval of the annual report, the notice calling the general meeting shall set out the place where the draft of the articles of association, the draft of the management plan or the annual report can be examined and the procedure for the examination of these documents.

(4) If an apartment owner has notified the apartment association of its e-mail address, the notice calling the general meeting of apartment owners and the documents specified in subsection (3) of this section shall be sent to that address.

§ 21. Adoption of resolution without calling meeting

(1) Apartment owners have the right to adopt resolutions without calling a general meeting of apartment owners.

(2) The management board shall send a draft of the resolution specified in subsection (1) of this section to all apartment owners, specifying the term by which the apartment owners must present their position on the draft resolution. If an apartment owner does not give notice of whether the apartment owner is in favour of or opposed to the resolution during this term, it shall be deemed that the apartment owner votes against the resolution.

(3) A resolution shall be adopted if more than one-half of the votes of apartment owners are in favour, unless the articles of association prescribe a greater majority requirement.

(4) The management board shall prepare a record of voting concerning the voting results and shall immediately send it to the apartment owners. A record of voting shall set out:

- 1) the name and seat of the apartment association;
- 2) the name of the recording secretary;
- 3) the adopted resolutions together with the voting results, including the names of the apartment owners who voted in favour of the resolutions;
- 4) at the request of an apartment owner who maintains a dissenting opinion with regard to a resolution, the content of the dissenting opinion of the apartment owner;
- 5) other circumstances of importance with regard to the vote.

(5) The positions of apartment owners specified in subsection (2) of this section shall be an integral part of the record of voting.

(6) If all the apartment ownerships belong to one person, resolutions may be adopted without observing the provisions of § 20 of this Act and subsections (1)–(5) of this section. In such case a resolution shall be prepared in writing and signed by the apartment owner.

(7) The provisions of subsection (6) of this section also apply in the case where there are more apartment owners and they all agree to the resolution.

§ 22. Right to vote at general meeting

(1) Each apartment ownership has one vote at a general meeting of apartment owners. The articles of association of an apartment association may prescribe that each apartment owner has one vote regardless of the number of apartment ownerships belonging to the apartment owner or that the number of votes is determined by the size of the share in the common ownership of the apartment ownership.

(2) The set of apartment owners entitled to take part in a general meeting of apartment owners shall be determined on the day of the general meeting prior to the beginning of the general meeting.

(3) An apartment owner does not have the right to vote if release of the apartment owner from obligations or liabilities, conclusion of a transaction between the apartment owner and the apartment association, or conduct of a legal dispute with the apartment owner or appointment of a representative of the apartment association in such legal dispute or transaction, or issues related to the monitoring or evaluation of the activities of the apartment owner or representative thereof in the capacity of a member of the management board is being decided or if a decision made pursuant to § 32 of this Act applies with regard to the apartment owner. The votes of such member shall not be taken into account in the determination of representation.

(4) The provisions of subsection (3) of this section do not apply if all the apartment ownerships belong to one person. In such case all transactions between the apartment association and the apartment owner shall be formalised in writing or a document signed by the apartment owner which sets out the main terms and conditions of a transaction shall be immediately prepared.

(5) An apartment owner in person or a representative of an apartment owner, the existence of whose right of representation shall be certified by a written document, may participate in a general meeting. The participation

of a representative in the general meeting shall not deprive the apartment owner of the right to participate in the general meeting. The articles of association of an apartment association may prescribe the maximum number of the apartment owners represented by the same person.

§ 23. Calling of new general meeting

(1) If a general meeting of apartment owners lacks quorum pursuant to subsection 20 (2) of this Act, the management board shall call a new general meeting with the same agenda which shall have a quorum regardless of the number of participants. Such fact shall be referred to in the notice calling the general meeting.

(2) The notice for calling a new general meeting shall be sent within ten days but not earlier than two days after the general meeting which lacked quorum.

§ 24. Management board

(1) The management board is the managing body of the apartment association which represents and manages the apartment association. In addition to the provisions of this Act, the provisions of subsection 26 (2) and §§ 27-29 and 32 of the Non-profit Associations Act concerning the management board of a non-profit association apply to the management board of an apartment association.

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(2) The management board may have one member (manager) to three members. The articles of association may prescribe a number of the members of the management board or the maximum and minimum number of members which is different from that provided for in this subsection.

(3) An apartment association is not required to have a management board if the number of apartment ownerships does not exceed ten or if all the apartment ownerships belong to one person.

(4) If there is no management board, the apartment owners shall manage and represent the apartment association jointly.

§ 25. Appointment of alternate member of management board

(1) An apartment owner, a creditor of the apartment association or another interested person may, with good reason, demand appointment of an alternate member of the management board of the apartment association by a court.

(2) An interested person may also demand appointment of an alternate member of the management board of the apartment association in the case provided for in subsection 24 (3) of this Act.

(3) If possible, a court shall appoint a person who complies with the requirements provided for in subsection 28 (2) of this Act as an alternate member of the management board of the apartment association.

(4) The authority of a court-appointed alternate member of the management board shall continue until the appointment of a new member of the management board by the general meeting of apartment owners.

Subdivision 3 Administrator

§ 26. Administrator

(1) An apartment association may be managed and represented by a legal person (hereinafter *administrator*) instead of the management board of the apartment association.

(2) An apartment association may only have one administrator.

(3) The provisions concerning a management board of an apartment association apply to the election, activities and liability of an administrator.

§ 27. Liability of member of management board of administrator

(1) If an administrator has caused damage to the apartment association by violation of its obligations and the assets of the administrator are not sufficient to satisfy the claims of the apartment association, a person who was a member of the management board of the administrator at the time the damage was caused shall also be liable for the damage caused to the apartment association. A member of the management board of the administrator is released from liability if the member proves that both the administrator and the member of the management

board of the administrator have performed their obligations with diligence normally expected from a member of the management board.

(2) Several members of the management board of the administrator shall be solidarily liable for the obligation to compensate for the damage provided for in subsection (1) of this section.

(3) The limitation period for the claim provided for in subsection (1) of this section is five years.

(4) A trustee in bankruptcy has the right to file the claim provided for in subsection (1) of this section also if the apartment association has waived the claim against a member of the management board of the administrator or has entered into a contract of compromise with such member or, upon agreement with the member of the management board of the administrator, has limited the claim or filing thereof in another manner or reduced the limitation period.

§ 28. Building manager

(1) An administrator shall appoint a natural person (hereinafter *building manager*) for each apartment association represented and managed thereby who shall perform the duties of the administrator in that apartment association.

(2) A building manager shall have the professional qualification of a real estate manager, apartment association manager or apartment building manager for the purposes of the Professions Act.
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(3) A person may be the building manager of several apartment associations at the same time.

(4) An administrator shall notify the apartment owners of the name and contact details of the building manager.

(5) If an administrator violates the obligation provided for in subsection (1) of this section and fails to eliminate the violation within one month after the violation occurs, the administrator may be recalled by a resolution of the general meeting of the apartment owners and the right of extraordinary cancellation of the authorisation agreement entered into with the administrator may be exercised.

(6) The right provided for in subsection (5) of this section shall not be precluded or restricted by an agreement between the apartment owners or the articles of association of the apartment association.

Subdivision 4 Invalidity of Resolutions

§ 29. Invalidity of resolution of body of apartment association

(1) If the requirements of law, an agreement of apartment owners or the articles of association for calling a general meeting of apartment owners are materially violated, the meeting shall not have the right to adopt resolutions except if all the apartment owners participate in or are represented at the meeting. Resolutions adopted at such meeting are void unless the apartment owners with respect to whom the procedure for calling the meeting was violated approve of the resolutions.

(2) A claim for revocation and establishment of the nullity of a resolution of a body of an apartment association shall be adjudicated in court in proceedings on petition. The provisions of the General Part of the Civil Code Act concerning invalidity of a resolution of a body of a legal person apply otherwise with the specifications provided for in this section.

(3) The limitation period for a claim for revocation of a resolution of a body of an apartment association shall be 60 days as of adoption of the resolution.

(4) At the request of an interested person, a court may restore the term specified in subsection (3) of this section. The provisions of the Code of Civil Procedure concerning restoration of procedural terms apply to restoration.

(5) Upon filing of a claim for revocation of a resolution of a body of an apartment association, the court shall not hear the matter before the term specified in subsection (3) of this section expires. Different applications for revocation of the same resolution shall be joined in one proceeding.

(6) If necessary, a court shall suspend the following for the period of proceedings:

- 1) the validity of the contested resolution, and prohibit adoption of resolutions of the same content;
- 2) the authority of an existing member of the management board, and appoint an alternate member of the management board for the apartment association.

Division 3

Use of Object of Apartment Ownership

§ 30. Rights of apartment owners

- (1) An apartment owner has the right to:
- 1) use the object of exclusive ownership at the discretion of the apartment owner in so far as such use is not in conflict with law or with the legitimate interest of a third person;
 - 2) use the object of common ownership according to its intended purpose.
- (2) An apartment owner may demand that the object of exclusive ownership and common ownership be used pursuant to law and the agreements of the apartment owners and the articles of association of the apartment association. If the use of an object of exclusive ownership and common ownership is not regulated, they shall be used pursuant to the interests of the apartment owners.
- (3) Persons who use an apartment ownership shall also have the rights provided for in this section.
- (4) The demand provided for in subsection (2) of this section may also be made by the apartment association.

§ 31. Obligations of apartment owners

- (1) An apartment owner is required to:
- 1) maintain the object of exclusive ownership and use the object of exclusive ownership and common ownership in a manner not exceeding the effects produced on other apartment owners by the normal use of the property;
 - 2) tolerate effects which remain within the limits specified in clause 1) of this subsection;
 - 3) enable other persons to use the object of exclusive ownership if this is necessary for the maintenance of the object of common ownership. The owner shall be compensated for damage caused by such use.
- (2) Upon maintenance of the object of exclusive ownership, the apartment owner is, *inter alia*, required to keep the temperature and air humidity within the boundaries of the object of exclusive ownership at a level which ensures the preservation of the object of common ownership and the use of the objects of other exclusive ownerships according to their intended purpose and without excessive expenses.
- (3) The provisions of § 143 of the Law of Property Act apply upon performance of the obligations provided for in clauses (1) 1) and 2) of this section.
- (4) An apartment owner is required to ensure compliance with the provisions of subsections (1) and 2) of this section by his or her family members, temporary residents and persons who use the apartment ownership.
- (5) An apartment owner is required to organise the administration of the apartment ownership thereof also when the apartment owner is away.

Division 4 Demand for Transfer of Apartment Ownership

§ 32. Submission of demand for transfer of apartment ownership

- (1) If an apartment owner has repeatedly violated the obligations thereof with regard to another apartment owner or the apartment association and the other apartment owners consider it impossible for the apartment owner to continue to be one of the apartment owners, they may demand that the apartment owner transfer the apartment ownership thereof.
- (2) In particular, transfer of apartment ownership may be demanded if:
- 1) an apartment owner has repeatedly failed to perform the obligations provided for in § 31 of this Act;
 - 2) an apartment owner has delayed payment of at least six months' management expenses for more than three months; or
 - 3) the activities of an apartment owner severely interfere with the exercise of other apartment ownerships.
- (3) Submission of the demand specified in subsection (1) of this section shall be decided by a majority of the votes of the apartment owners.
- (4) Submission of the demand provided for in subsection (1) of this section shall not be precluded or restricted by an agreement between the apartment owners.

(5) If immovable property ownership is divided into two apartment ownerships, one apartment owner may submit the demand provided for in subsection (1) of this section against the other apartment owner.

§ 33. Demand for enforcement of judgment

(1) If an apartment owner who has violated the obligations thereof fails to transfer the apartment ownership at the latest within three months after the submission of the demand, the transfer shall be decided by a court on the basis of an action filed by at least one apartment owner or the apartment association. The court shall make a judgment on the basis of the facts on which the demand for transfer is based.

(2) Adherence to the term specified in the first sentence of subsection (1) of this section is not required if the apartment owner has given notice of refusal to transfer.

(3) The action specified in subsection (1) of this section shall be filed before one year has passed from the submission of the demand.

(4) An apartment owner or apartment association may demand enforcement of a court judgment pursuant to the procedure provided for in the Code of Enforcement Procedure.

Division 5 Administration

§ 34. General principles of administration

(1) The administration of an object of apartment ownership is based on law, the articles of association of the apartment association, agreements between apartment owners and the interests of apartment owners.

(2) Apartment owners shall administer the object of a share in the common ownership of apartment ownerships through the apartment association.

(3) A person who has a claim arising from apartment ownership against all apartment owners on the same basis, in respect of which a solidary obligation is prescribed by law, shall file the claim against the apartment association.

§ 35. Regular administration

(1) Apartment owners shall decide issues related to the regular administration of the object of a share in common ownership of apartment ownership by the majority of votes, unless the articles of association of the apartment association prescribe more stringent requirements.

(2) In particular, the following activities are deemed to be regular administration:

- 1) regular maintenance and repair of the object of common ownership;
- 2) entry into contracts for services consumed through the apartment association;
- 3) entry into a non-life insurance contract on the basis of the reinstatement value of the object of common ownership;
- 4) insurance of the liability of the apartment association;
- 5) establishment of a sufficient legal reserve and repair fund;
- 6) taking of a loan or assumption of another financial obligation with effects similar to a loan if the amount thereof does not exceed the amount of the management costs of the apartment association for the previous financial year;
- 7) ordering of energy audit and energy performance certificate.

§ 36. Borrowing

(1) Taking of a loan or assumption of another financial obligation with effects similar to a loan, if such obligation, either independently or together with existing obligations, exceeds the amount of the management costs of the apartment association for the previous financial year, may be decided by the majority of votes provided for in subsection 9 (3) of this Act.

(2) Before assumption of an obligation provided for in subsection (1) of this section, the management board of the apartment association shall have a corresponding notation made in the apartment associations register.

§ 37. Acts necessary for preservation of object of common ownership

(1) An apartment owner has the right to perform acts necessary for the preservation of the object of common ownership without the consent of the other apartment owners and the apartment association, and may demand reimbursement of necessary expenses from the apartment association.

(2) The management board of the apartment association may also decide the performance of the acts provided for in subsection (1) of this section if a delay would cause significant damage to the object of common ownership.

(3) If it is impossible to cover the costs necessary for the preservation of the object of common ownership on the basis of the current management plan, the provisions of subsection 41 (4) shall apply.

§ 38. Significant rearrangements and restoration of building

(1) Making of structural rearrangements or other rearrangements exceeding the alterations necessary for the maintenance of the object of common ownership shall not be decided within regular administration but by an agreement between the apartment owners.

(2) The alterations specified in subsection (1) of this section may be carried out without the consent of the apartment owner if the rearrangements do not violate the rights of such apartment owner more than the apartment owner is required to tolerate pursuant to clause 31 (1) 2) of this Act.

(3) If more than one-half of a building is destroyed and the damage is not covered by an insurance contract or in any other manner, the building shall not be restored within regular administration.

§ 39. Modernisation of object of common ownership

The making of such necessary changes for modernisation of the object of common ownership, including for improvement of energy efficiency, which do not change the purpose of use of any exclusive ownership and which do not otherwise excessively harm the legitimate interests of any apartment owner may be decided by the majority of votes provided for in subsection 9 (3) of this Act.

§ 40. Distribution of obligations between apartment owners upon covering management costs

(1) Apartment owners shall make periodic advance payments on the basis of the management plan according to the size of their share in the common ownership.

(2) Taking into account the conditions of an agreement between the apartment owners, the articles of association of the apartment association may prescribe the basis for the distribution of the obligations and the procedure for payment upon covering the management costs which differ from the provisions of subsection (1) of this section if this is reasonable, taking into account all the circumstances, and does not excessively harm the legitimate interests of any apartment owner. In particular, the articles of association may prescribe that the apartment owners shall pay for the management costs which depend on the actual consumption after the amount of costs becomes known either according to the size of their share in the common ownership or the volume of the service consumed.

(3) An apartment owner may refuse to cover the costs to which the apartment owner did not consent if demanding the apartment owner to cover such costs would be contrary to the principle of good faith.

§ 41. Management plan

(1) The management board of an apartment association shall prepare a management plan for a financial year, consisting of the following parts:

- 1) an overview of the situation of the object of common ownership and of the planned activities;
- 2) intended revenue and expenditure of the apartment association;
- 3) distribution of the obligations of apartment owners upon covering management costs;
- 4) size of payments to be made in the legal reserve and repair fund;
- 5) the estimated quantity and cost of fuel, heat, water, sewerage and electricity.

(2) If an agreement between the apartment owners or the articles of association of the apartment association prescribe payment of management costs which depend on the actual consumption after the amount of costs becomes known, the management plan shall only determine the amount of the remaining costs.

(3) The management plan shall be established by the general meeting of the apartment owners.

(4) If it becomes evident during the financial year that the established management plan does not ensure administration of apartment ownerships to the extent prescribed in the management plan or permanent solvency of the apartment association, the management board of the apartment association is required to prepare a new management plan and call a special general meeting of the apartment owners for the establishment of the new management plan.

(5) If a new management plan has not been established by the beginning of a financial year, the current management plan shall be in force until the establishment of a new management plan.

§ 42. Fine for delay and compensation for collection costs

(1) If an apartment owner delays payment of management costs, the apartment association may demand from the apartment owner a fine for delay in the amount provided for in the second sentence of subsection 113 (1) of the Law of Obligations Act.

(2) If an apartment association may demand a fine for delay, the apartment association may require the apartment owner to pay compensation for collection costs in the amount and on the conditions provided for in the Law of Obligations Act.

Division 6

Securing Claim of Apartment Association

§ 43. Liability of transferee of apartment ownership

(1) Upon transfer of an apartment ownership, the rights and obligations of the apartment owner shall transfer to the transferee at the time of transfer of the ownership.

(2) Upon transfer of an apartment ownership, except in enforcement and bankruptcy proceedings, the transferee of the apartment ownership shall be liable as a surety to the apartment association for the obligations of the transferor arising from the apartment ownership which have fallen due. The liability of the transferee is limited to the value of the apartment ownership.

§ 44. Right of security of apartment association

(1) In order to secure claims arising from an apartment ownership, the apartment association has the right of security over the apartment ownership (hereinafter *right of security of apartment association*).

(2) The provisions of Acts concerning mortgages of the first ranking apply to the right of security of an apartment association.

(3) The amount of the right of security of an apartment association shall be the amount of the management costs of the apartment ownership for the previous financial year.

(4) The amount of the right of security of an apartment association shall be determined according to the annual report approved by the general meeting of the apartment owners as at the date of transfer of the ownership. If an apartment association has the obligation to submit the annual report to the apartment associations register, the amount of the right of security of the apartment association shall be determined according to the annual report submitted to the register.

(5) If the annual report for the first financial year of an apartment association is not ready, the amount of the right of security of the apartment association shall be determined according to the management plan. If payment of management costs which depend on the actual consumption after the amount of costs becomes known is prescribed pursuant to subsection 41 (2) of this Act, the amount of the right of security shall be determined according to the respective forecast included in the management plan.

(6) By an agreement on exclusive ownership, the apartment owners may determine the specific monetary amount of the right of security of the apartment association.

Division 7

Right to Obtain Information

§ 45. Right of apartment owner to obtain information

(1) Apartment owners have the right to obtain information from the management board on the activities of the apartment association and to examine the documents of the apartment association.

(2) The management board may refuse to give information or to present documents if there is a basis to presume that this may cause significant damage to the legitimate interests of another apartment owner or a third person.

(3) If the management board refuses to give information or refuses to allow documents to be examined, the apartment owner may demand that the legality of the apartment owner's demand be decided by the general meeting of apartment owners or to submit, within two weeks after receiving the refusal of the management board or within four weeks after submission of the request if the management board has not responded to the request, a petition to a court in a proceeding on petition in order to obligate the management board to give information or to allow documents to be examined.

§ 46. Obligation of apartment owner to give information

(1) An apartment owner shall notify the apartment association of the existing telecommunications of the apartment owner, primarily telephone number and e-mail address.

(2) If the residence or seat of an apartment owner differs from the location of the apartment ownership, the apartment owner shall also notify the apartment association of the postal address of the residence or seat of the apartment owner.

(3) Unless an apartment owner has notified the apartment association of the postal address of the residence or seat of the apartment owner, the apartment association shall have the right to deem the location of the apartment ownership to be the residence or seat of the apartment owner.

§ 47. Right of other person to obtain information

If an apartment ownership is encumbered with a limited real right, the person with the limited real right has the right to obtain information from the apartment association on the amount of and bases for the debt of the apartment owner for management costs.

Division 8 Assets and Accounting of Apartment Association

§ 48. Legal reserve

An apartment association shall have a legal reserve the amount of which shall be at least one-twelfth of the expenditure forecast of the apartment association for a year. The amount of legal reserve shall be decided by the general meeting of apartment owners.

§ 49. Supervision

The provisions of § 34 of the Non-profit Associations Act apply to supervision.

§ 50. Accounting

(1) The management board shall organise the accounting of the apartment association.

(2) An apartment association which includes up to ten apartment ownerships and which is managed and represented by the apartment owners jointly pursuant to subsection 24 (4) of this Act may maintain its accounts on a cash basis. In such case, the provisions of subsection 43 (2) of the Accounting Act apply.

§ 51. Annual report

(1) If an apartment association is required to prepare the annual report, the provisions of subsections 36 (1)–(4) of the Non-profit Associations Act concerning the annual report of a non-profit association shall apply to the preparation, submission and approval of the annual report with the specifications provided for in this Act.

(2) The articles of association of an apartment association may prescribe the obligation of auditing the annual accounts of the apartment association.

(3) In addition to other information provided by law, the annual report of an apartment association shall set out the amount of management costs of each apartment ownership.

(4) An apartment association shall submit the approved annual report to the apartment associations register within six months after the end of a financial year. If auditing is compulsory, the annual report shall be submitted together with the sworn auditor's report.

[RT I, 21.05.2014, 1 - entry into force 01.01.2018]

Division 9 Specifications for Insolvency of Apartment Association

§ 52. Application of Bankruptcy Act

In the case of insolvency of an apartment association, the provisions of the Bankruptcy Act apply with the specifications provided for in this Act

§ 53. Establishment of temporary management plan

(1) A court shall decide on the establishment of a temporary management plan on the proposal of the trustee. A temporary management plan shall ensure at least coverage of the costs of the bankruptcy proceedings and regular administration of the apartment ownerships until a decision to establish a management plan provided for in subsection 54 (1) of this Act is made.

(2) If bankruptcy is declared, the court shall decide on the term for submission of a temporary management plan which shall not be longer than 30 days.

(3) Upon establishment of a temporary management plan, the court may prescribe payment of management costs which depend on the actual consumption after the amount of costs becomes known even if this is not prescribed by the articles of association of the apartment association.

(4) The apartment association, apartment owners, bankruptcy petitioner and trustee in bankruptcy may file an appeal against the ruling on establishment of a temporary management plan.

§ 54. Establishment of management plan

(1) After the defence of claims, the court shall decide on the establishment of a management plan of the apartment association on the proposal of the trustee in order to restore solvency (hereinafter *management plan for restoring solvency*) or to terminate the share of exclusive ownership of apartment ownerships and the apartment association (hereinafter *management plan for terminating apartment association*).

(2) The apartment association, apartment owners and creditors may file an appeal against the ruling on establishment of a management plan. An appeal against the ruling on establishment of a management plan for terminating the apartment association may also be filed by the person with the limited real right which encumbers an apartment ownership. Appeals may be filed against the circuit court ruling on the appeal against the ruling.

§ 55. Establishment of management plan for restoring solvency

(1) A court shall decide on the establishment of a management plan for restoring solvency if it is possible to restore the solvency of the apartment association within a reasonable period of time, taking into account all the circumstances.

(2) A court shall decide on the establishment of a management plan for restoring solvency to the extent and for a period of time necessary for the satisfaction of the claims of creditors to the greatest extent possible and within the shortest period of time possible. Upon deciding on the establishment of a management plan, the court shall take into account all the circumstances, in particular the meaning of apartment ownerships for apartment owners, solvency of apartment owners and causes of insolvency.

(3) The provisions of the Bankruptcy Act concerning approval of a compromise and the consequences thereof shall apply to deciding on the establishment of a management plan for restoring solvency and the consequences thereof.

(4) The claims of creditors against the apartment association that are not filed during the bankruptcy proceedings and claims that are not satisfied during the bankruptcy proceedings shall terminate.

§ 56. Establishment of management plan for terminating apartment association

A court shall decide on the establishment of a management plan for terminating the apartment association and the termination of the share of exclusive ownership of apartment ownerships and the apartment association, and also the termination of the limited real rights which encumber apartment ownerships or transfer of such rights to the register part to be opened concerning the immovable if it is impossible to establish a management plan for restoring solvency, taking into account all the circumstances.

Chapter 4 Termination of Apartment Ownerships and Apartment Association

§ 57. Methods of termination of apartment ownerships and apartment association

(1) Apartment ownerships and the apartment association shall be terminated by an agreement between apartment owners on the termination of exclusive ownership or a decision of the owner of apartment ownerships.

(2) Termination of an apartment association, including compulsory termination is not possible without termination of the share of exclusive ownership of apartment ownerships.

§ 58. Termination of exclusive ownership by agreement

- (1) Apartment owners may decide on the termination of the share of exclusive ownership of apartment ownerships and the apartment association by an agreement.
- (2) An agreement between the apartment owners and the making of a corresponding entry in the land register are required for the termination of exclusive ownership.
- (3) The provisions of § 120 of the Law of Property Act apply to agreements on termination of exclusive ownership.
- (4) The provisions of § 119 of the Law of Property Act apply to transactions by which termination of exclusive ownership is undertaken.

§ 59. Demand for termination of exclusive ownership

- (1) The provisions of § 9 of this Act concerning amendment of an agreement on exclusive ownership apply to demanding of declarations of intent necessary for termination of the share of exclusive ownership of apartment ownerships and apartment association.
- (2) If the building is completely destroyed, it is presumed that the termination of the share of exclusive ownership of apartment ownerships and apartment association is, taking into account the legitimate interests of apartment owners, in accordance with the principle of good faith and does not excessively harm the legitimate interests of any apartment owner.

§ 60. Closure of apartment ownership register parts and of registry card of apartment association

- (1) An apartment association shall submit an application for entry of the liquidation of the apartment association in the register to the registrar of the apartment associations register. A transcript of the agreement on the termination of exclusive ownership shall be appended to the application.
- (2) An application for the closure of apartment ownership register parts and the closure of the registry card of the apartment association shall be submitted to the registrar of the land register. After receiving an application, the registrar of the land register shall forward the application to the registrar of the apartment associations register.
- (3) Upon closure of apartment ownership register parts, a new register part shall be opened concerning the immovable and at the same time all the apartment ownership register parts shall be closed pursuant to the procedure provided for in the Law of Property Act and the Land Register Act. Information from the closed register parts shall be entered in the corresponding divisions of the new register part.
- (4) An entry on the closure of apartment ownership register parts shall be made after the registrar of the apartment associations register gives notification that there are no hindrances to the closure of the registry card of the apartment association. The registry card of the apartment association may be closed after the liquidation of the apartment association. An entry on the closure of the registry card of the apartment association shall be made immediately after the making of the entry on the closure of apartment ownership register parts.
- (5) The specific activities of the registrar of the land register and the registrar of the apartment associations register upon closure of apartment ownership register parts and registry cards of apartment associations shall be established by a regulation of the minister responsible for the area.

§ 61. Termination of apartment ownerships based on application of owner

- (1) A person to whom all the apartment ownerships belong may terminate exclusive ownerships and the apartment association by a registration application submitted to the registrar of the land register. Exclusive ownerships shall terminate as of the making of an entry in the land register.
- (2) In the case provided for in subsection (1) of this section, the provisions of § 60 of this Act apply.

Chapter 5 Right of Superficies in Apartments

§ 62. Right of superficies in apartments

- (1) If the right of superficies belongs to several persons as legal shares, the superficiaries may agree that each co-owner shall have exclusive ownership of a dwelling or non-residential premises in the building forming

an essential part of the right of superficies or to be built on the basis of the right of superficies, and rights of superficies in apartments shall be created.

(2) A superfiary may divide a right of superficies belonging to the superfiary into rights of superficies in apartments. In such case, the provisions of § 8 of this Act apply.

(3) Consent of the owner of the immovable is required for the creation of rights of superficies in apartments.

(4) An immovable shall not concurrently be an object of apartment ownership and be encumbered with a right of superficies in apartments.

(5) Upon registration of rights of superficies in apartments, an independent land register part shall be opened for each right of superficies in apartments and at the same time the current register part concerning the right of superficies shall be closed. An entry concerning division of a right of superficies into rights of superficies in apartments shall be made in the register part for the encumbered immovable.

(6) The provisions regulating apartment ownership and right of superficies apply otherwise to right of superficies in apartments.

Chapter 6

Apartment Associations Register

§ 63. Maintenance of register

(1) The apartment associations register (hereinafter *register*) is a part of the non-profit associations and foundations register with regard to which the provisions of legislation concerning the non-profit associations and foundations register apply unless otherwise provided for in this Act.

(2) The register shall be maintained by the registration department of Tartu County Court.
[RT I, 09.05.2017, 1 - entry into force 01.01.2018]

(3) [Repealed -RT I, 09.05.2017, 1 - entry into force 01.01.2018]

(4) The following information is entered on a registry card of an apartment association:

- 1) the registry code of the apartment association;
- 2) the name of the apartment association;
- 3) the additional name of the apartment association;
- 4) the address of the seat of the apartment association if it differs from the address of the location of apartment ownerships;
- 5) the name and personal identification code of a member of the management board;
- 6) the name and registry code of the administrator;
- 7) the name and personal identification code of the trustee in bankruptcy;
- 8) the name and personal identification code of the liquidator;
- 9) the right of representation of the members of the management board and the liquidators if such right differs from the general rule prescribed by law;
- 10) the date of approval and amendment of the articles of association;
- 11) a notation concerning a loan provided for in § 36 of this Act;
- 12) the termination;
- 13) the declaration of bankruptcy and termination of bankruptcy proceedings;
- 14) the deletion from the register;
- 15) information on the depositary of documents of the liquidated association;
- 16) the consecutive number and date of entry, and the signature, name and title of the person enforcing the ruling on entry and of the person competent to make the decision on entry;
- 17) references to earlier and later entries, and notations.

(5) If a court has suspended the authority of a member of the management board on the basis of clause 29 (6) 2) of this Act, a corresponding notation shall be made in the register.

Chapter 7

Implementing Provisions

Division 1

Application of Act to Movable

§ 64. Application of Apartment Ownership and Apartment Associations Act to movable

The provisions of Chapters 1–4 and 6 of this Act apply also to dwellings and non-residential premises which are in commerce as movable.

Division 2 Transitional Provisions

§ 65. Existing apartment ownerships

The provisions of this Act concerning apartment ownership apply to apartment ownerships which have been entered in the land register upon entry into force of this Act.

§ 66. Communities of apartment owners

(1) If no apartment association has been founded for administration of the shares in the common ownership of apartment ownerships for the purposes of the Apartment Associations Act in force until entry into force of this Act, an apartment association shall be created for the administration of the apartment ownerships upon entry into force of this Act.

(2) The rights and obligations of the community of apartment owners shall transfer to the apartment association.

(3) If apartment owners have appointed an administrator for the purposes of the Apartment Ownership Act in force until entry into force of this Act, the administrator who is a natural person is deemed to be a member of the management board of the apartment association and the administrator who is a legal person is deemed to be an administrator for the purposes of this Act.

(4) A registry card of an apartment association is opened in the apartment associations register ex officio.

§ 67. Apartment associations founded for administration of one immovable

(1) If an apartment association has been founded pursuant to the procedure provided for in the Apartment Associations Act in force until entry into force of this Act for the administration and management of the shares in the common ownership of apartment ownerships of one immovable, the existing apartment association shall be deemed to be an apartment association for the purposes of this Act.

(2) If information specified in subsection 3 (6) or the second sentence of subsection 17 (4) of the Apartment Associations Act in force until entry into force of this Act has been entered in the registry card of an apartment association, the apartment association shall be entered in the apartment associations register ex officio as an apartment association upon entry into force of this Act.

(3) In the case specified in subsection (2) of this section, the registered immovable numbers of the apartment ownerships shall be deleted from the registry card of the apartment association and the name of the apartment association shall be entered in the apartment associations register as an additional name of the apartment association.

§ 68. Apartment associations founded for administration of several immovables

(1) If an apartment association for the purposes of subsection 3 (5) of the Apartment Associations Act in force until entry into force of this Act has been founded for the administration and management of the shares in the common ownership of apartment ownerships of several immovables, an apartment ownership for the purposes of this Act shall be created for the administration of the apartment ownerships of each immovable upon entry into force of this Act and the existing apartment association shall be deemed to be terminated.

(2) The registry cards for the apartment associations shall be opened in the apartment associations register ex officio.

(3) The provisions of the General Part of the Civil Code Act and the Non-profit Associations Act concerning liquidation and deletion from the register of a non-profit association apply to liquidation and deletion from the register.

(4) After satisfaction of the claims of creditors, the assets of an apartment association to be liquidated shall be divided between the apartment associations created upon entry into force of this Act according to the total area of the object of exclusive ownership.

(5) If the assets of an apartment association to be liquidated are insufficient for satisfaction of all the claims of the creditors, the apartment associations created upon entry into force of this Act shall be liable for the claims as joint obligors according to the total area of the object of exclusive ownership.

§ 69. Continuation of activities of apartment association founded for administration of several immovables

(1) The provisions of § 68 of this Act do not apply if apartment owners have made the decision specified in subsection 17²(1) of the Apartment Associations Act in force until entry into force of this Act and submitted the decision to the registrar on time.

(2) The articles of association of an apartment association founded for the administration of several immovables may prescribe that the making of majority decisions of apartment owners specified in this Act shall be in the competence of the general meeting of the apartment owners of each immovable.

(3) In the case of an apartment association founded for the administration of several immovables, the provisions of subsection 34 (3) of this Act do not apply.

(4) Apartment owners may decide to terminate the apartment association founded for the administration of several immovables. A decision on termination is adopted if the decision receives more than one-half of all the votes by the apartment owners who own more than one-half of the shares in the common ownership of the immovable. The minutes of the general meeting which made the decision shall be notarially authenticated.

(5) The apartment owners of each immovable may decide to separate from the apartment association founded for the administration of more than two immovables on the conditions provided for in subsection (4) of this section.

(6) In the cases specified in subsections (4) and (5) of this section, the provisions of § 68 of this Act apply.

§ 70. Term for election and entry in register of management board and administrator

(1) If an apartment association is created on the basis of § 66 or § 68 of this Act, the application for entry of a member of the management board or the administrator in the apartment associations register shall be submitted by 30 June 2018.

(2) The requirement provided for in subsection (1) of this section does not apply if the apartment association is not required to have a management board pursuant to subsection 24 (3) of this Act.

§ 71. Term for making notation in register concerning loan

If, upon entry into force of this Act, the financial obligations of an apartment association comply with the requirements provided for in subsection 36 (1) of this Act, the management board of the apartment association shall submit an application for making a notation specified in subsection (2) of the same section in the apartment associations register by 31 December 2018.

§ 72. Exercise of right of security of apartment association

(1) If an apartment ownership is encumbered with a mortgage before entry into force of this Act, the amount of the right of security of the apartment association until expiry of the mortgage shall be five per cent of the revenue to be distributed in the enforcement proceedings or of the amount of money received from the sale of the pledged object in the bankruptcy proceedings, but not more than the amount specified in subsection 44 (3) of this Act.

(2) If the amount of the right of security of an apartment association pursuant to subsection (1) of this section is less than the amount specified in subsection 44 (3) of this Act, the provisions concerning mortgages of the first vacant ranking shall apply to the remaining part.

Division 3 Amendment of Acts

§ 73.–§ 92.[Omitted from this text]

Division 4

Repeal of Acts

§ 93.–§ 94.[Omitted from this text]

Division 5 Entry into Force of Act

§ 95. Entry into force of Act

(1) This Act enters into force on 1 January 2018.

(2)–(3) [Omitted from this text.]