



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Draft Bill

**An Act to add the reformed law of
real security and publication of rights to
the Civil Code of Québec**

BOULEVARD
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Introduced by
Mr Herbert Marx
Minister of Justice

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EXPLANATORY NOTES

This bill proposes the introduction of two new books into the Civil Code of Québec, which are added to Book Two on the Family already adopted and in force, and Books One, Three and Four, on Persons, Successions and Property.

The object of this bill is the reform of the law of real security and of the publication of rights.

BOOK SIX: PREFERENCE AND HYPOTHEC

Book Six, pursuing the reform of the law of real security, revises the existing body of rules governing preference and hypothec. It comprises five titles.

Title One, on the common pledge of creditors, preserves, with certain alterations, the rule that the property of a debtor is charged with the performance of his obligations and is the common pledge of his creditors.

Title Two, on preferred claims, preserves the existing right to preference, without registration, by virtue of a preferred claim, but limits this to certain claims.

Title Three, on hypothecs, contains four chapters. Chapter I consists of general provisions dealing with the nature of a hypothec, the kinds of hypothec and the object and extent of hypothecs. Chapter II, on conventional hypothecs, indicates who may grant the different kinds of hypothec, and sets forth certain rules respecting obligations secured by conventional hypothecs. Lastly, this chapter sets out other rules applicable to the various kinds of hypothec: immovable hypothecs, movable hypothecs with or without delivery, and so-called floating hypothecs. Chapter III deals with legal hypothecs, and Chapter IV, with specific effects of hypothecs.

Title Four treats of the remedies available to preferred and hypothecary creditors. Chapter I sets forth the various remedies in general, and Chapter II, the provisions common to all remedies, namely, their availability, the preliminary formalities, the effects of a creditor's notice of intention to pursue a remedy, and the rights of the debtor or the holder of the property. Chapter III sets forth the remedies common to preferred and hypothecary creditors, namely, surrender and sale of the property by order of the court, while Chapter IV deals with the specifically hypothecary remedies of taking possession, taking in payment, and sale of the property by the creditor.

BOOK NINE: PUBLICATION OF RIGHTS

Book Nine presents the reformed law relating to the publication of rights, which is effected by their registration. It is divided into seven chapters.

Chapter I defines the field to which publication applies, indicating what rights must be or may be published.

Chapter II deals with the effects of publication, including the setting up of the published rights against third persons, the ranking of rights and the protection of third persons in good faith, as well as other effects.

Chapter III permits the advance entry of certain rights.

Chapter IV is devoted to the mechanisms of publication by registration. It introduces the certificate of verification of a deed, provides for the registration of rights by way of abstracts and notices, indicates the registers in which rights are entered, lays down special rules regarding certain registrations and regarding the register of personal and movable rights, lists the duties of the registrar and sets forth the procedure for the renewal of registration.

Chapter V of this book deals with the registers, enunciating the rules regarding examination of the registers and describing the various registers kept for registrations, namely, the entry book, the land register, the register of addresses and the register of personal and movable rights.

Chapter VI, on the registration of immovables with reference to the cadastre, deals both with the cadastral plan and with amendments to the plan, and, in the case of amendments, provides for the transfer of entry of rights.

The final chapter, on the cancellation of rights, deals in turn with the grounds for cancellation, special cases of cancellation and the procedure and effects of cancellation.

Draft Bill

An Act to add the reformed law of real security and publication of rights to the Civil Code of Québec

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Book Six is added to the Civil Code of Québec, established by chapter 39 of the statutes of 1980, and reads as follows:

“BOOK SIX

PREFERENCE AND HYPOTHEC

TITLE ONE

THE COMMON PLEDGE OF CREDITORS

2800. The property of a debtor is charged with the performance of his obligations and is the common pledge of his creditors.

2801. A debtor who incurs a personal obligation charges, for its performance, all his property, movable and immovable, present and future, except property declared exempt from seizure or property which is the object of a division authorized by law.

2802. A debtor may agree with his creditor to bind himself in respect of certain property only. In such a case he is bound to fulfil his obligation only from the property they describe.

2803. A stipulation of unseizability in an act by onerous title is null.

Likewise, such a stipulation in an act by gratuitous title is null except in respect of that part of the property given or bequeathed which in the opinion of the court is necessary as support.

2804. Creditors may seize the property of their debtor and cause it to be sold.

If the creditors rank equally, the price is distributed proportionately to their claims, unless some of them have a legal cause of preference.

2805. Hypothecs and preferences attached by law to certain claims are legal causes of preference.

TITLE TWO

PREFERRED CLAIMS

2806. A claim to which the law attaches the right of the creditor to be preferred over the other creditors, even the hypothecary creditors, is a preferred claim.

Preferred claims are indivisible.

2807. Only the following claims are preferred claims and, notwithstanding any agreement to the contrary, they are in all cases collocated in the order here set out:

- (1) Legal costs and all expenses incurred in the common interest;
- (2) The claims of those entitled to reimbursement of their expenses on a property;
- (3) Claims of municipalities and school boards for taxes on taxable immovables;
- (4) Claims of the state for taxes.

2808. Preferred claims for legal costs and those of the state may be a charge on movable or immovable property.

Notwithstanding the first paragraph, the preference attached to claims of the state in respect of immovable property, for taxes, avails only against ordinary creditors.

2809. Legal costs and expenses incurred in the common interest of the creditors include costs of seizure and sale of the property, costs of proceedings to enable the creditors to obtain payment of their claims and expenses for the conservation of their common pledge.

2810. A creditor holding a movable hypothec may, in respect of the property encumbered by the hypothec, notify the state by notice that he has registered a notice of intention to pursue a remedy under this Book or to take procedures in execution, and request it to declare the amount of its preferred claim, for taxes, in the register of personal and movable rights. The notice must be deposited for registration, with proof of the notification.

Where a notification is given, the claim of the state for taxes retains preference in respect of the property only up to the amount the state declares by way of a registered notice within thirty days following the notification.

2811. Preferred claims need not be registered in order to be set up against other creditors and third persons.

2812. Preferred claims rank, according to their order among themselves, and without regard to their date, before movable or immovable hypothecs.

Preferred claims of the same rank come together, each in proportion to the amount of the claim.

2813. The cession of rank between preferred creditors must be express. Where it occurs, the rank of the creditors is inverted, to the extent of their respective claims, but in such a manner as not to prejudice any intermediate creditors.

2814. A person subrogated to the rights of a preferred creditor has the same right of preference.

Notwithstanding the foregoing, the preferred creditor retains his preference, in respect of any remainder due to him, over the person subrogated to his rights if he did not guarantee him payment of the amount for which the subrogation was obtained.

2815. Persons subrogated to the rights of the same preferred creditor, and the assignor in respect of any remainder due to him, are paid concurrently.

Notwithstanding the foregoing, persons having obtained an assignment with a guarantee of payment are paid in preference to all other assignees and to the assignor, and, among themselves, in the order of the dates of service of their respective assignments.

2816. In a case of contribution or collocation among several preferred creditors, the creditor of an indeterminate, unliquidated or conditional claim is collocated according to his order of preference, but subject to the conditions prescribed in the Code of Civil Procedure.

TITLE THREE

HYPOTHECS

CHAPTER I

GENERAL

SECTION I

NATURE OF A HYPOTHEC

2817. A hypothec is a real right over one or several movable or immovable properties charged with the performance of an obligation, under which the creditor may be put in possession of the property or follow it into whosever hands it may be, take possession of it or take it in payment, or sell it or cause it to be sold and, in that case, have a preferred claim to the proceeds of the sale ranking as determined in this Code.

2818. A hypothec is merely an accessory right, and subsists only as long as the obligation whose performance it secures continues to exist.

2819. A hypothec is indivisible and subsists in its entirety over all the charged properties, over each of them and over every part of them, even where the property or obligation is divisible.

2820. The rights conferred by a hypothec can be set up against third persons only when it is published in accordance with this Book or the Book on publication of rights.

SECTION II

KINDS OF HYPOTHEC

2821. Hypothecation can take place only in the cases and according to the formalities authorized by law.

A hypothec may be conventional or legal.

2822. A conventional hypothec results from an agreement; a legal hypothec results from the law alone.

2823. A hypothec is movable or immovable according as the object charged is movable or immovable property or a universality of movable or immovable property.

A movable hypothec may be created with or without delivery.

2824. The effects of a conventional hypothec may be suspended; in such a case, the hypothec is said to be floating, and may be a charge on both movable and immovable property at the same time.

SECTION III

OBJECT AND EXTENT OF HYPOTHECS

2825. A hypothec is a charge on one or several specific corporeal or incorporeal properties, or on all the present or future properties included in a universality.

2826. A hypothec secures the principal, the interest accrued thereon and all justifiable costs incurred for their recovery.

2827. Property declared by law to be exempt from seizure is not subject to hypothecation.

Nor are support payments, salary or wages or other remuneration, or non-exigible fees.

2828. A hypothec created on the bare ownership extends to the full ownership on the extinction of the usufruct. The same rule applies in the case of a hypothec created by the owner of a property under emphyteutic lease.

2829. A hypothec on the property of another or on future property begins to affect it only when the grantor acquires title to the hypothecated right.

2830. A hypothec extends to everything united to or incorporated with the property, from the time of incorporation.

2831. A hypothec subsists on the new movable resulting from the transformation of property charged with a hypothec and extends

to the property resulting from the mixture or combination of several movables some of which are so charged. A person acquiring ownership of the new property, particularly through application of the rules on movable accession, is bound by such hypothecs.

2832. A hypothec on a universality of properties subsists even after one of them is alienated and extends to any property acquired in replacement.

If the property was alienated in the ordinary course of activity of the enterprise and not replaced by new property, the hypothec subsists but extends only to the price received for the alienation.

2833. A hypothec on a universality of property subsists notwithstanding the loss or destruction of the hypothecated property where the debtor replaces it in a reasonable time, having regard to the quantity or nature of the property.

2834. A hypothec on a universality of claims does not extend to the new debts of the debtor when these result from the sale of his other property by a third person exercising his rights.

Nor does it extend to a claim under a property insurance contract on the other movable or immovable property of the debtor.

2835. A hypothec on shares of the capital stock of a legal person subsists on the shares or other securities received or issued on the purchase, redemption, conversion or cancellation or any other transformation of the hypothecated shares.

The creditor cannot object to the transformation on the ground of his hypothec, but if he has possession of the shares, the hypothec gives him authority to proceed with the formalities required to complete the transaction.

2836. A hypothec subsists, in favour of a creditor who refuses to accept payment or is absent from the place where the debt is payable, on a sum of money tendered and deposited by the debtor in accordance with this Code, if the tenders and deposit are authorized by the court and if the hypothec is thereupon reduced and the reduction is entered in the margin opposite its entry in the register. In such a case, the depositor is no longer entitled to withdraw the sum of money tendered and deposited.

2837. A hypothec on an undivided share of a property subsists so far as the grantor or his assign preserves rights over some part of

the property by partition or other declaratory act of ownership, subject to the Book on successions.

If the grantor does not preserve any rights over the property, the hypothec subsists and is a charge, according to its rank, on the price of transfer payable to the grantor, the payment resulting from the exercise of a right of redemption or a stipulation of preference, or the balance payable to the grantor.

2838. Where several hypothecs on separate properties extend to sums of money, the rights of the hypothecary creditors over those sums are concurrent and are proportional to the value of the hypothecated properties.

CHAPTER II

CONVENTIONAL HYPOTHECS

SECTION I

GRANTOR OF THE HYPOTHEC

2839. Only a person having the capacity to alienate a property may grant a conventional hypothec on it.

The debtor of the obligation secured or a third person may grant a conventional hypothec.

2840. A person whose right in a property is conditional or open to an attack in nullity can only grant a hypothec subject to the same condition or nullity.

2841. A natural person, unless carrying on an enterprise, cannot grant a movable hypothec without delivery, except on the specified property he is acquiring.

2842. Only a person who carries on an enterprise, even as administrator of the property of others, may, whether the enterprise deals in property or in services and whether or not it is commercial, grant a hypothec on a universality of property, movable or immovable, present or future, corporeal or incorporeal.

Notwithstanding the foregoing, the person cannot hypothecate any property except that used for the service and the carrying on of the enterprise or property in which it deals. Thus, he may hypothecate animals, machinery, tools or equipment pertaining to the enterprise,

claims and accounts receivable, patents and trademarks, or corporeal movables included in the assets of the enterprise kept for sale or for processing in the manufacture or transformation of property intended for sale or for use in providing a service.

2843. Only a person carrying on an enterprise, even as the administrator of the property of others, may grant a hypothec on movable corporeal things represented by a bill of lading, receipt or other negotiable instrument.

2844. Only a trustee or a legal person may grant a floating hypothec on the property of the trust patrimony or of the legal person.

2845. No one may hypothecate any right arising from a life insurance contract except with the consent of the persons having irrevocable rights under the contract.

SECTION II

OBLIGATIONS SECURED BY CONVENTIONAL HYPOTHECS

2846. A hypothec may be granted to secure any obligation whatever.

2847. A hypothec granted to secure payment of a sum of money is valid even if, when it is granted, the debtor has not received the prestation in consideration of which he has undertaken the obligation or has received only part of it.

This rule is applicable in particular to lines of credit and the issue of bonds or other titles of indebtedness by a legal person or a trustee.

2848. A hypothec is valid only if the constituting instrument indicates the cause of the obligation and the certain and determinate sum for which it is granted and the certain and determinate value of the obligation whose performance it secures.

The value of the obligation is considered not less certain and determinate where the instrument, rather than stipulating a fixed rate of interest, contains the necessary particulars for determining the actual rate of interest on the obligation.

2849. The constituting instrument need not indicate the sum of money for which the hypothec is granted or the value of the obligation where the hypothec secures payment of a life annuity or some other obligation assessable in money and stipulated in a gift.

2850. The value of the obligation is indeterminate where the hypothec secures payment of a possible claim, as in the case of a line of credit or of an obligation renewable under the terms of the constituting instrument.

2851. Where the value of the obligation is indeterminate, the creditor cannot publish his hypothec for a value in excess of an estimated value which he must expressly declare when the hypothec is granted or later. In the latter case, a notice indicating the estimated value must be deposited for registration as soon as possible and served on the debtor and the grantor, in the same manner as a notice of intention to pursue a remedy.

2852. If the creditor fails to declare the estimated value, the debtor himself may determine the value of his obligation. In such a case, he must deposit for registration a notice indicating the value of his obligation, accompanied with a statement of the debt, with which the creditor must provide him.

If the creditor fails to provide the debtor with a statement of the debt, the declaration made by the debtor suffices.

2853. The notice of estimated value limits the amount of the obligation secured by the hypothec to the amount indicated in the notice and, where such is the case, reduces the amount for which it was granted.

2854. Where the value of the obligation is indeterminate, the hypothec subsists notwithstanding full or partial performance of the obligation, unless the hypothec has been cancelled.

2855. Where the creditor refuses to advance the sums of money he has lent or undertaken to lend under the terms of the constituting instrument, the debtor may cause the hypothec to be cancelled or reduced upon payment of only the amounts that may then be due.

2856. A hypothec securing payment of bonds or other titles of indebtedness issued by a trustee or a legal person authorized to do so by law must be granted by notarial deed *en minute* in favour of the attorney of the creditors.

SECTION III

IMMOVABLE HYPOTHECS

2857. An immovable hypothec must, on pain of absolute nullity, be granted by notarial deed *en minute*.

It is published by registration.

2858. An immovable hypothec is valid only so far as the constituting instrument specifically designates the hypothecated property.

2859. A hypothec charging a universality of immovables has effect in respect of any one of them only if registered against it.

2860. The parties may agree that the hypothec of an immovable includes the hypothecation of the present and future rents produced by it and the indemnities paid under the insurance contracts covering the immovable or rents, but such hypothecation requires the same publication as any other movable hypothec.

SECTION IV

MOVABLE HYPOTHECS

§ 1.—*Movable hypothecs without delivery*

2861. A movable hypothec without delivery must, on pain of absolute nullity, be granted in writing.

It is published by registration.

2862. The constituting instrument of a movable hypothec must contain a sufficient description of the hypothecated property.

2863. A movable hypothec charging the fruits and products of the soil, such as crops and minerals, and the materials and other things forming an integral part of an immovable, takes effect when they become movables with a separate existence, provided that the hypothec has previously been registered against the immovable. It ranks only from its date of registration in the register of personal and movable rights.

2864. Where movable property charged with a registered hypothec is sold otherwise than in the ordinary course of activities of an enterprise, the creditor may preserve his right to follow it by depositing a notice for registration in the register of personal and movable rights, under the name of the purchaser; he shall indicate any serial number of the property in the notice.

2865. Notice of preservation of hypothec must be deposited within fifteen days of the creditor's becoming aware of or consenting to it;

the creditor must transmit a copy of the notice to the purchaser within the same time.

The notice must indicate the name of the debtor, and of the purchaser, the serial number or trademark of the property, if any, and the name of the manufacturer or distributor.

§ 2.—*Movable hypothecs with delivery*

2866. A movable hypothec with delivery is granted by delivery of the property or title to the creditor or, if the property is already in his hands, by his holding it, as security for his claim, with the owner's consent. If a third person has possession on behalf of the creditor, the hypothec must be in writing.

2867. A movable hypothec with delivery is published by the possession of the property or title exercised by the creditor, and remains so only so long as possession is continuous.

2868. Possession remains continuous even if its exercise is prevented by the act of a third person without the consent of the creditor or is temporarily interrupted by the handing over of the property or title to the grantor or to a third person for evaluation, repair, transformation or improvement.

2869. The creditor, with the consent of the grantor, may exercise possession through a third person, but if so, detention by the third person effects publication only from the time the third person receives evidence in writing of the hypothec.

2870. A creditor prevented from exercising possession may revendicate the property from the person holding it, unless the cause of prevention is the exercise of a common or hypothecary remedy by another creditor.

2871. A movable hypothec granted with delivery may at a later date be published by registration, but even in that case it cannot subsist or conserve its rank unless the creditor has continuous possession.

2872. A movable hypothec on corporeal things represented by a bill of lading, receipt or other negotiable instrument or on incorporeal rights may be set up against the creditors of the grantor from the time the creditor gives value even though the title has not yet been remitted to him.

Notwithstanding the foregoing, the hypothec must, in order to subsist, be registered within ten days of being granted.

2873. Where the title is negotiable by endorsement and delivery, or delivery alone, its remittance to the creditor takes place by endorsement and delivery, or by delivery alone.

§ 3.—*Movable hypothecs on claims or incorporeal rights*

2874. A movable hypothec on a claim or an incorporeal right held by the grantor against a third person or on a universality of claims or incorporeal rights may be granted with or without delivery.

The creditor cannot set up his hypothec against third persons in either case until a copy or extract of the instrument of hypothecation is remitted to the debtors of the claims or rights hypothecated or until the debtors have, in writing, accepted the hypothec.

If the debtor cannot be found in Québec, the hypothec must be served on him by general notice and be registered in order to be a valid remittance of the instrument to the debtor.

2875. A hypothec on a universality of claims or incorporeal rights, even when granted by the remittance of the title to the creditor, must be published by registration.

The registration and its service on the debtors by personal or general notice of registration have the same effect as a remittance of the instrument to the debtors. The notice is served in the same manner as a notice of intention to pursue a remedy.

2876. A hypothec on a claim or an incorporeal right held by the grantor against a third person must, where the claim or right is itself secured by a hypothec, be published by registration of the hypothec; the creditor must remit a duplicate of the certificate of registration to the debtor of the hypothecated claim or right.

2877. A movable hypothec on a claim or an incorporeal right or a universality of claims or incorporeal rights affects only the sums paid or otherwise discharged after the debtor's acknowledgment, the remittance of the deed or registration certificate or service of the notice or, in the case of a floating hypothec, after service of the general notice of crystallization.

§ 4.—*Miscellaneous*

2878. A movable hypothec on a ship is effective only if at the time of registration the ship is not registered under the Canada Shipping Act or under a foreign law to the same effect.

It may also be granted on the cargo of a registered ship or on the freight, whether or not the things are on board, but in that case it is subject to any rights over the things other persons may have under such legislation.

SECTION V

FLOATING HYPOTHECS

2879. A hypothec is floating when its effect is suspended and it remains so until the creditor deposits notice of crystallization for registration.

To have effect upon crystallization, the hypothec must have been registered before then and, if immovable properties are charged, it must have been registered against each of them.

2880. Until crystallization of a floating hypothec, the grantor may alienate or hypothecate the charged property or make use of it as if no hypothec had been granted.

Until crystallization, any condition or restriction stipulated in the constituting instrument in respect of the rights has effect only between the parties, despite the knowledge of third persons.

2881. A sale *en bloc* by the grantor or the amalgamation or reorganization of a legal person cannot be set up against the holder of a floating hypothec.

2882. A floating hypothec takes effect where the debtor defaults on one of his obligations and the creditor registers a notice of crystallization denouncing the default; the creditor must serve the notice on both the debtor and the grantor, in the same manner as a notice of intention to pursue a remedy.

2883. A floating hypothec has, on crystallization, all the effects of a movable or immovable hypothec in respect of whatever rights the grantor may have at that time in the charged property; if the property includes a universality, the hypothec is also a charge on properties in which the debtor acquires rights after crystallization.

2884. A floating hypothec on a claim or incorporeal right or on a universality of claims or incorporeal rights may be set up against the debtors of the claims and of the hypothecated rights, as well as against third persons, upon registration of the notice of crystallization, if the hypothec has been registered and a general notice of crystallization is published, in the same manner as a general notice of intention to pursue a remedy.

2885. The creditor holding a floating hypothec on a universality of property may, from registration of the notice of crystallization, pursue the remedy of entry into possession in preference to any other creditor having published his hypothec after the date of registration of the floating hypothec.

2886. Where there are several floating hypothecs on the same property, crystallization of one of them enables the creditors holding the others to register a notice of crystallization.

2887. Where the default of the debtor has been remedied, the creditor may require the registrar to cancel the notice of crystallization.

The effects of crystallization cease with the cancellation, and the effect of the hypothec is suspended as before.

CHAPTER III

LEGAL HYPOTHECS

2888. Only the following rights and claims may give rise to a legal hypothec:

(1) Claims of the state for taxes, and certain other claims of the state or of legal persons of public right, under specific provision of law;

(2) Rights and claims of persons having taken part in the construction or renovation of an immovable;

(3) The claim of a vendor who has not been paid the price of property sold;

(4) The rights and claims of copartitioners for the warranty of the shares among them and of adjustments and equalizing payments;

(5) The claim of a syndicate of co-owners for payment of the common expenses and contributions to the contingency fund;

(6) Rights under a judgment or a deposit before the court.

2889. The legal hypothec of the state, including those for taxes, and the hypothecs of legal persons of public right may be a charge on movable or immovable property.

Such a hypothec takes effect only from deposit for registration of a notice identifying the legislation under which the hypothec exists and the property of the debtor on which the creditor intends to exercise it, and stating the amount of the claim. The notice must be served on the debtor in the same manner as a notice of intention to pursue a remedy.

Registration by the state of a legal movable hypothec for taxes does not prevent the state from exercising, at its option, its preferred claim.

2890. The legal hypothec in favour of the persons having taken part in the construction or renovation of an immovable cannot be a charge on any other immovable. It exists only in favour of the architect, engineer, supplier of materials, workman and contractor or subcontractor in proportion to their work on the immovable or to the materials or services supplied by them for the work.

The hypothec is limited to the market value of the work, materials or services when they were supplied and the secured creditors rank concurrently among themselves.

2891. The legal hypothec of persons having taken part in the construction or renovation of an immovable subsists without registration for thirty days after completion of the work.

After that time, it is preserved only by the deposit for registration of a notice describing the immovable charged with the hypothec, with a detailed statement of the claim. The notice must be served on the debtor in the same manner as a notice of intention to pursue a remedy.

It is extinguished six months after registration unless the creditor takes an action against the owner of the immovable to preserve it and deposits a notice of the action for registration.

2892. The legal hypothec of the vendor may be exercised against the sold property for whatever is due him on the price.

It has effect from registration of the sale.

2893. The legal hypothec of copartitioners is exercised against the property which was common.

It has effect from registration of the partition.

2894. The legal hypothec of a syndicate of co-owners is on the fraction of the co-owner who has defaulted on payment of his common expenses or his contribution to the contingency fund. It has effect only upon deposit of a notice for registration.

The notice must indicate the nature of the claim, the amount exigible at the time of registration, and the expected amount of charges and claims for the current year and the next two years; this last amount must not exceed that for the current year, with a reasonable increase to account for foreseeable rises in prices.

2895. Every creditor under a deposit before the court or a money judgment rendered by a court having jurisdiction in Québec may acquire a legal hypothec on the movable or immovable property of his debtor.

He may acquire it by depositing for registration a notice describing the property charged with the hypothec and specifying the amount of the obligation, and, in the case of an annuity or support, the amount of the instalments. A copy of the judgment must be produced with the notice. The notice must be served on the debtor in the same manner as a notice of intention to pursue a remedy.

2896. Except in the case of the legal hypothec of the state or of a legal person of public right, the court, on application of the owner of the property charged with a legal hypothec, may determine which property the hypothec may be exercised against or give leave to the applicant to substitute other security for the hypothec sufficient to secure payment; it may thereupon order the registration of the legal hypothec cancelled.

CHAPTER IV

CERTAIN EFFECTS OF HYPOTHECS

SECTION I

RIGHTS AND OBLIGATIONS OF THE PARTIES

2897. A hypothec does not divest the grantor or the person in possession, who continue to enjoy their rights over the charged property

and may dispose of them, subject to the rights of the hypothecary creditor.

2898. Neither the grantor nor the person in possession may destroy or deteriorate the hypothecated property or materially reduce its value except by normal use of the property or in case of necessity.

SECTION II

CREDITOR IN POSSESSION OF HYPOTHECATED PROPERTY

2899. Where the creditor of a movable hypothec with delivery is given possession of the property charged, he must do whatever is necessary to preserve it.

He cannot use the property without the permission of the grantor.

2900. The fruits and revenues of the hypothecated property are collected by the creditor.

2901. The creditor must hand over the fruits collected to the grantor, unless otherwise stipulated, but shall apply the revenues collected, first, to justifiable expenses, then, to any interest owing to him and, lastly, to the principal of the debt.

2902. Where shares of the capital stock of a legal person are redeemed for cash by the issuer, the creditor collecting the price shall apply it as if it were revenue.

2903. The creditor is not liable for loss or deterioration of the hypothecated property by a fortuitous event or as a result of its age, perishability, or normal and authorized use.

2904. The grantor is bound to repay to the creditor his expenses incurred for the preservation of the property.

2905. The grantor cannot recover possession of the hypothecated property until he has performed his obligation, unless the creditor in possession abuses his rights.

The creditor loses his hypothec on being bound or compelled by judgment to return the property.

2906. An heir of the debtor who has paid his share of the debt cannot demand his share of the hypothecated property until the whole debt is paid.

An heir of the creditor in possession cannot, on receiving his share of the debt, return the hypothecated property to the prejudice of any unpaid coheir.

SECTION III

CREDITOR IN POSSESSION OF HYPOTHECATED CLAIMS

2907. A creditor holding a hypothec on a claim shall collect the revenues produced by the claim, and the principal of the claim falling due while the hypothec is in effect; he shall also give a discharge for the sums he collects.

He shall apply the amounts collected to payment of the obligation, according to the rules governing payment generally.

2908. A debtor granting a hypothec on a claim assents, unless otherwise stipulated, to the creditor's applying the sums collected to the principal owed him, even if the debt is not yet exigible.

2909. The creditor may authorize the hypothecary debtor to collect, as they fall due, repayments of principal or the revenues from the hypothecated claims.

The creditor's hypothec extends to the amounts so collected.

2910. The creditor may at any time withdraw his authority to the debtor to collect. To do so he must serve notice on the debtor and on the debtor of the hypothecated claims that he will thenceforth collect the sums falling due himself. The notice is served in the same manner as a notice of intention to pursue a remedy and, if the hypothec is registered, must be deposited for registration.

2911. The creditor is not required while the hypothec is in effect to sue for recovery of principal or interest of the hypothecated claims, but he must inform his debtor within a reasonable time of any default in payment of any sums exigible on the claims.

2912. In all cases, either the creditor or the hypothecary debtor may institute proceedings in recovery of a hypothecated claim, provided he impleads the other.

The action of the creditor interrupts any prescription that may run against the hypothecary debtor.

2913. The creditor must remit to the hypothecary debtor any sums collected over and above the principal of the claim, interest and justifiable expenses, notwithstanding any stipulation by which the creditor may keep them on any ground whatever.

2914. A debtor who consents to his creditor's hypothecating his claim in favour of a third person cannot thereafter set up against the third person the compensation which he could have set up against his own creditor before he consented.

Where the debtor does not consent to the hypothec, although it may be set up against him, only those obligations of the original creditor created after the hypothec could be set up are excluded from compensation.

TITLE FOUR

REMEDIES OF PREFERRED AND HYPOTHECARY CREDITORS

CHAPTER I

REMEDIES IN GENERAL

2915. Preferred and hypothecary creditors have, for the enforcement and realization of their security, in addition to the provisional measures provided in the Code of Civil Procedure, only the remedies provided in this Title.

2916. The preferred creditors may, where their debtor is in default and their claim is liquid and exigible, cause the charged property to be sold under court order and obtain its surrender.

They are also entitled to preference on the price, even where the property is sold at the instance of another creditor.

2917. If the holder destroys or deteriorates the charged property by his act, the preferred or hypothecary creditors may, in addition to their other remedies, recover the resulting damages from him up to the amount of their claim; the amount so collected is imputed upon their claim.

2918. Hypothecary creditors have the same remedies as preferred creditors, and, in addition, the remedies proper to hypothec where their debtor is in default and their claim is liquid and exigible.

Thus, they may, where the law permits, take possession of the charged property in whosever hands it may be, take it in payment of their claim or sell it.

2919. Hypothecary creditors may institute proceedings in declaration of hypothec in order to establish their right and interrupt prescription.

CHAPTER II

PROVISIONS COMMON TO ALL REMEDIES

SECTION I

AVAILABILITY

2920. Between hypothecary creditors, the earlier ranking may pursue his remedies in preference to those who come after him.

Notwithstanding the foregoing, the earlier ranking creditor may be liable for payment of justifiable expenses of a later creditor if, after being notified of proceedings by the latter, he delays unreasonably before invoking his preference.

2921. A creditor whose hypothec is a charge against more than one property may pursue his remedies simultaneously or successively against such properties as he sees fit.

2922. Where later ranking creditors are secured by a preferred claim or hypothec on only one of several properties charged in favour of one and the same creditor, his preferred claim or hypothec is spread among them, where two or more of the properties are sold under court order and the proceeds are still to be distributed, proportionately over what remains to be distributed of their respective prices.

2923. The holder of a floating hypothec cannot pursue any remedy until registration of notice of crystallization.

2924. The holder of a movable hypothec with delivery on shares of the capital stock of a legal person need not notify his right to the issuer of the shares, but the pursuit of his rights and remedies under the hypothec is, in all cases, subject to the provisions and agreements governing the transfer of the hypothecated shares.

2925. Any remedy lies against the owner or possessor of the property, even if he is not personally liable for the debt, or against the administrator of the property of another who holds and controls it.

2926. Where property subject to a preferred claim or charged with a hypothec is under usufruct, any remedy must be pursued against the bare owner and the usufructuary simultaneously, or notified to whichever of them is not proceeded against first.

SECTION II

PRELIMINARY FORMALITIES

2927. A creditor intending to pursue a remedy must serve notice of his intention on the debtor and, where such is the case, on the holder of the property against whom he intends to pursue the remedy.

The notice must set forth the debtor's omission or breach and a reminder that the debtor or a third person in his stead has a right to remedy the default. It must also set out the nature of the remedy which the creditor intends to pursue and call on the debtor or the holder, as the case may be, to surrender the property within twenty days of service if the property is movable, or sixty days if immovable, or ten days if the creditor intends to pursue the remedy of taking possession.

2928. Notice of intention must be served personally or by registered or certified mail. Where such service is not possible, it may be served by general notice published once in a newspaper circulated in the locality of the residence of the debtor or grantor of the hypothec or in the locality of any enterprise carried on by the debtor.

2929. A creditor having served notice of intention to pursue a remedy must deposit the notice for registration within a reasonable time, with the minute or other proof of service.

2930. The registrar is bound to inform, by registered or certified mail, every other preferred or hypothecary creditor and every other person who has given notice of his address in respect of the property of the registration of the notice of intention.

2931. A dealer in securities who, as creditor, has a hypothec on the securities he holds for his debtor may, in the ordinary course of business and where allowed by the regulations and usages observed where he trades and by his agreement with his debtor, sell the securities or take them in payment without giving notice of intention or observing any time limits prescribed in this Title.

SECTION III

EFFECTS OF NOTICE OF INTENTION

2932. The alienation of property charged with a preferred claim or a hypothec, effected by the debtor or holder after the creditor has registered notice of his intention to pursue a remedy, has no effect against the creditor unless the acquirer deposits the amount of the debt, including interest and justifiable expenses due to the creditor.

2933. Judgment may be given against a holder personally to pay the fruits and revenues he has collected and to repair any damage he may have caused to the property since service of the creditor's notice of intention.

SECTION IV

RIGHTS OF THE DEBTOR OR HOLDER

2934. A debtor or holder served with notice of the creditor's intention to pursue a remedy or any other interested person may defeat the creditor's remedy by paying him, in addition to his justifiable expenses, the amount due to him in principal and interest or, if the creditor intends to take the property in payment or if he allows it to be so taken, by remedying the omission or breach set forth in the notice and any subsequent omission or breach.

The right may be exercised at any time before the property is taken in payment or sold.

2935. A hypothecary creditor having given notice of his intention to pursue a remedy is not entitled to demand any indemnity from the debtor or holder except interest owing and justifiable costs.

CHAPTER III

REMEDIES COMMON TO PREFERRED AND
HYPOTHECARY CREDITORS

SECTION I

SURRENDER

2936. A preferred or hypothecary creditor having registered notice of intention to pursue a remedy may, where the debtor or holder refuses to surrender the property voluntarily in the allotted time, move that the court order him to surrender it.

On being satisfied of the existence of the claim and of the debtor's default, the court orders the surrender.

2937. The debtor or holder may oppose surrender by showing a valid ground of objection, such as the creditor's obligation to him in warranty, the extinction of the debt, exemption of the property from seizure, the nullity of the preferred claim or hypothec, or the serious prejudice to him arising from a procedural irregularity, but subject in this last case to the power of the court to grant leave to remedy the irregularity.

2938. The creditor may, before the expiry of the allotted time, obtain an order from the court for surrender of the property, where there is reason to fear that otherwise recovery of his claim may be endangered, or where the property is perishable or susceptible to rapid deterioration. In the latter cases, he may pursue his remedies immediately.

The motion need not be served on the debtor or the holder but the order must be served on them. If the order is subsequently rescinded, the creditor is bound to return the property or to pay back the price of alienation.

2939. Where the good faith of the creditor or his aptitude to administer or ability to sell the property contemplated in his motion for surrender is challenged, the court may order the creditor to furnish a surety to guarantee the proper exercise of his rights.

2940. A holder having a preferred claim for expenses made on the property by himself or by his predecessors not personally liable for the debt may move that the surrender of the charged property be subject to payment to him of his preferred claim.

2941. A holder who has received the property in payment of his preferred or hypothecary claim, which is anterior to the claim contemplated in the notice of intention, or who has paid the preferred or hypothecary claims anterior to his own, may move that surrender be conditional on the creditor's giving him security that the property will be sold at a sufficient price to ensure full payment of his anterior preferred or hypothecary claim.

2942. Real rights which the holder held in the property when he acquired it or that he extinguished while it was in his possession revive after surrender.

The hypothec revives with effect from the date of its publication, but the holder's hypothecary creditors are subrogated to his rights, in their order of preference among themselves.

A notice of revival of the real right or hypothec must be deposited for registration.

2943. Surrender is effected by actual delivery of the movable property to the creditor or his attorney, or by abandonment of the immovable in such a manner that the creditor or his attorney may take possession of it, unless the court orders otherwise.

Thus, if the property must be sold by court order, it may be surrendered into the hands of the person entrusted with the sale.

2944. A holder condemned to surrender the property must do so in the time allotted by the judgment; if he fails to do so, he becomes personally liable for the debt.

SECTION II

COURT ORDERED SALES

2945. The court, on motion by a creditor who has registered notice of intention to pursue the remedy of court ordered sale, and after expiry of the time allotted for surrender of the property, may order sale of the property.

Where the court orders sale, it shall designate a person who will proceed with the sale; it shall fix the conditions and charges of the sale, indicate whether it may be made by agreement, a call for tenders or public auction and, after inquiring as to the value of the property, fix the upset price.

2946. The creditor may require that the sale be subject to his hypothec.

2947. The person entrusted by the court with the sale is bound to observe the rules prescribed in the Code of Civil Procedure, and in addition to notify the interested parties of his proceedings, report to the court and render account to it of the proceeds.

The person acts in the name of the debtor or holder and is bound to declare his quality to the purchaser.

2948. Preferred claims and hypothecs not reserved in the conditions and charges of the sale are extinguished by the sale.

2949. Where a creditor acquires the property on which he had a preferred or hypothecary claim, the debtor is released from his debt to the creditor up to the market value of the property at the time of acquisition, less any claims ranking ahead of the acquirer's claim.

The debtor is also released where, within three years from the sale, the creditor, by resale of the property or part of it or by any other transaction respecting it, receives value equal to or greater than the amount of his claim, including principal, interest and costs, his expenses on the property, with interest at the legal rate or, as the case may be, the last rate stated in the deed of hypothec, and the other preferred or hypothecary claims ranking ahead of his own.

2950. The creditor is presumed to have acquired the property if it is sold to a person related to him, particularly a relative by blood or marriage up to the second degree, a person living with him, a partner, or a legal person of which he is a director or which he controls.

2951. A debtor, on being released, is entitled to a discharge from his creditor.

If the creditor refuses to grant the discharge, the debtor may move that the court declare his release and order his debt cancelled.

2952. Release of the principal debtor entails release of his sureties and other warrantors, who may exercise the same rights as the principal debtor, even independently of him.

CHAPTER IV

HYPOTHECARY REMEDIES

SECTION I

TAKING POSSESSION

§ 1.—*When available*

2953. Where the attorney of the creditors holds a hypothec securing the payment of bonds or other forms of indebtedness issued by a trustee or a legal person authorized by law to that effect, he may temporarily take possession of the hypothecated property and administer

it for the benefit of the creditors. He acts in such a case as administrator of the property of others entrusted with full administration.

2954. The taking of possession of a property does not affect the rights of the lessee.

§ 2.—*Termination of possession*

2955. Taking of possession terminates under the same circumstances as administration of the property of others, and also where the claims of the creditors are satisfied in principal, interest and cost, or where the attorney registers notice of his intention to pursue another remedy.

The property in possession must on termination be returned to the debtor or the holder, or to his assigns, at the previously agreed place or, failing that, at the place where it is.

2956. The attorney must render account on termination of his administration.

The account is rendered by agreement and is closed by acceptance by the debtor or holder. If it is not rendered or closed by agreement, it is rendered judicially.

2957. Where the attorney of the creditors has, through his administration, obtained satisfaction of the debt, he must return to the debtor, in addition to the property, any surplus remaining in his hands after payment of the debt, the expenses of administration and justifiable costs incurred for the exercise of possession of the property.

SECTION II

TAKING IN PAYMENT

2958. Where, at the time of registration of the creditor's notice of intention, the debtor has already discharged one-half or more of the obligation secured by the hypothec, the property cannot be taken in payment without leave of the court.

If the court denies leave, it may, notwithstanding, revise the terms of payment of the balance on such terms as it considers reasonable, where the debtor is a natural person not carrying on an enterprise.

2959. Subsequent hypothecary creditors or the debtor may, within the time allotted for surrender, require the creditor to abandon his

proceedings for taking in payment and to proceed by sale of the property, provided that they have deposited a notice to that effect for registration and have reimbursed the creditor for his justifiable costs. The notice must be served on the creditor, the grantor and the debtor, as the case may be, in the same manner as a notice of intention to pursue a remedy.

2960. A creditor required to sell shall proceed to do so unless he prefers to pay the subsequent creditors who registered the notice, or unless, where the notice was registered by the debtor, the court grants him leave to take the property in payment on such terms as it may impose.

2961. Where the default has not been remedied or the creditor has not been paid in the time allotted for surrender, the creditor takes the property in payment by the effect of the judgment of surrender, or of a deed voluntarily made, if neither the subsequent creditors nor the debtor have notified him of their intention to require that he proceed by sale.

2962. Taking in payment extinguishes the obligation up to the market value of the property taken in payment. The creditor must pay any amount by which the value of the property taken in payment exceeds the amount of the obligation to the debtor or holder, as the case may be.

The amount of the obligation considered for the taking in payment includes, in addition to the principal, interest, and the justifiable costs of the creditor for the exercise of his rights, the sums of money paid by him to a preferred or hypothecary creditor ranking ahead of him.

2963. A creditor who takes a property in payment is deemed to be the owner from the time of registration of notice of his intention. He takes it as it then stood, free of all hypothecs published after his own.

Real rights created after registration of the notice cannot be set up against him, whether published or not, if he did not consent to them.

SECTION III

SALE BY CREDITOR

2964. Any hypothecary creditor having registered notice of his intention to sell the charged property himself may, after obtaining surrender of the property, proceed to sale by agreement, a call for tenders or public auction.

2965. The creditor must sell the property without unnecessary delay, at a commercially reasonable price, and in the best interest of the holder.

To that end, he may, if the hypothec is on a universality of property, sell the property *en bloc* or separately; he may also continue to use the property temporarily, complete its processing, harvest standing crops, or extract minerals or other products of the soil charged with the hypothec. If he does so, he is entitled to payment of his expenses.

2966. A creditor who sells the property himself acts in the name of his debtor or the holder and is bound to declare his quality to the purchaser.

2967. A creditor who proceeds by a call for tenders may do so through the newspapers or by invitation.

The call for tenders must contain sufficient information to enable any interested person to make an offer at the proper time and place.

2968. The creditor is bound to accept the highest offer unless the conditions attached to it render it less advantageous than another lower offer, or unless the price offered is not commercially reasonable.

2969. A creditor who proceeds to sale by public auction must hold it at the date, time and place fixed in the notice of sale served on his debtor or the holder.

2970. The creditor shall impute the proceeds of the sale, so far as they are sufficient, to payment of the justifiable costs of pursuing the remedy, payment of the claims prior to his rights, and, finally, payment of his claim.

He must remit any surplus of the price remaining after the imputation to the debtor or holder; where the proceeds of the sale are insufficient to pay the claim and costs, he retains a claim against his debtor for the balance due to him.

2971. The creditor must render an account of the proceeds of the sale to the debtor or holder within ten days after the sale.

The rendering of account may be contested in the manner set forth in the Code of Civil Procedure.

2972. Where the property is sold to a person related to the creditor, the debtor may be released from his debt to him under the same conditions and in the same manner as upon a court ordered sale.

2973. The purchaser takes the property subject to the hypothec charging it at the time of registration of the notice of intention, except that of the creditor acting and those which ranked ahead of that creditor's rights. He takes it subject also to the other real rights which were a charge on the property at that time.

Real rights created after registration of the notice cannot be set up against him, even where they have been published, if he did not consent to them.

TITLE FIVE

EXTINCTION OF PREFERENCES AND HYPOTHECS

2974. The preference granted by law to certain claims ceases by operation of law when the obligation which is its cause is extinguished.

2975. Hypothec is extinguished by the total extinction of the obligation whose performance it secures. In the case of a line of credit or in any other case where the debtor obligates himself again under a provision of the deed of hypothec, the hypothec, unless cancelled, subsists notwithstanding the extinction of the obligation.

2976. An immovable hypothec is extinguished by the lapse of thirty years from the date of its registration or registration of a notice giving it effect or renewing it, unless the registration has been renewed before the expiry of that time.

The foregoing provision does not apply to the legal hypothec of a syndicate of co-owners on the fraction of a co-owner, which is extinguished by the lapse of two years from its date of registration.

2977. A movable hypothec published by registration, unless it is floating and also affects immovables, is extinguished by the lapse of five years from the date of its registration or registration of a notice giving it effect or renewing it, unless the registration has been renewed before the expiry of that time.

A movable hypothec published by the creditor's entering into possession is extinguished on termination of his possession.

2978. Hypothec is extinguished by the total loss, change of nature, exclusion from being an object of commerce or expropriation of the hypothecated property.

Where a movable property becomes immovable, the movable hypothec subsists notwithstanding the change of nature of the property, provided that, within ten days after the creditor becomes aware of it, the hypothec is registered in the land register.

2979. Where a hypothecary creditor takes the hypothecated property in payment, the hypothec of the creditors ranking behind him is not extinguished except by registration of the deed or judgment authorizing the taking in payment.

2980. Other causes of extinction of hypothecs are provided by law.”

2. Book Nine, also, is added to the Civil Code of Québec, and reads as follows:

“BOOK NINE

PUBLICATION OF RIGHTS

CHAPTER I

PUBLICATION

SECTION I

GENERAL

3300. Rights are published by registration, or by such other mode as the law expressly permits.

Publication is for the benefit of the persons whose rights are published.

3301. Any person may demand registration, even a minor or a person under protection, in his own behalf or in behalf of another.

3302. Any restriction on the right to publish a right requiring publication, and any related penal clause, is null.

SECTION II

RIGHTS REQUIRING PUBLICATION

3303. The creation, acquisition, transmission and extinction of any immovable real right, and any attached qualification, such as a clause of resolution, resiliation, revocation or conditional extinction of an immovable real right, requires publication.

Movable rights require publication so far as prescribed by law.

3304. A judgment recognizing a right or declaring the nullity, resolution, revocation, resiliation or extinction of an immovable real right or of a movable right requiring registration also requires publication.

3305. Transfers of supervision and administration of immovables between the governments of Québec and Canada may be published.

Transfers of supervision and administration between the government of Québec or Canada and legal persons of public right also may be published.

CHAPTER II

EFFECTS OF PUBLICATION

SECTION I

SETTING UP OF RIGHTS

3306. The publication of rights allows them to be set up against third persons, ranks them and, where the law so provides, gives them effect.

Rights have effect between the parties without publication, unless the law expressly provides otherwise.

3307. A person who acquires or publishes a right in a property is deemed to be aware of any right registered against the property.

3308. An entry in the land register is deemed accurate on the lapse of ten years from the date of registration of the document giving rise to it. Before then it is only presumed accurate, like an entry in any other register.

SECTION II

RANKING

3309. Rights rank according to their date, hour and minute of entry in the entry book or, where the law permits publication by delivery, according to the time of delivery of the property or title to the creditor, as the case may be.

A hypothec on a universality of immovables ranks in respect of each immovable according to the time of registration of the hypothec against each.

3310. Where two documents relating to the same property are presented for registration at the same time, the older document is preferred.

Where two hypothecs are registered at the same time, they rank together and concurrently, and proportionately to the amount of each claim.

3311. The vendor's hypothec for payment of the price of sale ranks ahead of all other hypothecs granted by the purchaser on the property sold, if it is published within ten days after the sale; if published after that time, it ranks according to the rules applicable to hypothecs generally.

3312. An immovable hypothec published before registration of the grantor's title ranks only from the registration of that title, but after any hypothec created in the instrument of acquisition.

3313. Hypothecs on movables that have been transformed, mixed or combined so as to form a new movable rank according to the time of the earliest publication of a hypothec on any of the properties used to form the new property.

3314. A movable hypothec which, when acquired, was on the movable of another or a future movable ranks according to the time of its publication but after the vendor's hypothec.

3315. A floating hypothec ranks according to the date of registration of the notice of crystallization.

If several floating hypothecs are the subject of one and the same notice of crystallization, they rank among themselves according to their

respective dates of registration, regardless of the date of registration of the notice.

3316. The cession of rank between hypothecary creditors requires publication.

Where it occurs, the rank of the creditors is inverted, to the extent of their respective claims, but in such a manner as not to prejudice any intermediate creditors.

3317. A person subrogated to the rights of a hypothecary creditor has the same right of preference.

Notwithstanding the foregoing, the hypothecary creditor retains his preference, in respect of any remainder due to him, over the person subrogated to his rights if he did not guarantee him payment of the amount for which the subrogation was obtained.

3318. Persons subrogated to the rights of the same hypothecary creditor, and the assignor in respect of any remainder due to him, are paid concurrently.

Notwithstanding the foregoing, persons having obtained an assignment with a guarantee of payment are paid in preference to all other assignees and to the assignor, and, among themselves, in the order of the dates of notification of their respective assignments.

3319. In a case of contribution or collocation among several hypothecary creditors, the creditor of an indeterminate, unliquidated or conditional claim is collocated according to his order of preference, but subject to the conditions prescribed in the Code of Civil Procedure.

A creditor having a claim subject to a term which has become exigible as a result of the sale of the hypothecated property is collocated according to his rank.

SECTION III

OTHER EFFECTS

3320. The mention, in a document deposited for registration, of a right described in an earlier but unpublished document is not a publication of the right.

3321. Registration does not interrupt prescription.

Notwithstanding the foregoing, the registration of any transfer of an immovable real right interrupts prescription in respect of that right.

3322. No one may acquire by prescription the part of a lot visibly demarcated by a land surveyor.

3323. Rights published after the registration of the minutes of the creditor's seizure of a movable or immovable property cannot be set up against that creditor.

3324. The publication of a claim preserves, in favour of the creditor, the same rank for the interest due for the current year and the three preceding years as for the principal.

Similarly, the publication of an annuity preserves the preference for arrears for the current year and the three preceding years.

3325. A creditor has a hypothec for the surplus of arrears of interest or annuity instalments only from the time of registration of a notice setting forth the amount of the arrears claimed.

Notwithstanding the foregoing, interest due at the time of the original registration is preserved by the registration if its amount is stated in the notice.

3326. Substitution has no effect in respect of property acquired in replacement of substituted property unless the substitution is mentioned in the instrument of acquisition and the substitution is published.

Publication of the substitution does not affect the rights of third persons who have published the rights they derive from the institute by onerous title.

SECTION IV

PROTECTION OF THIRD PERSONS IN GOOD FAITH

3327. A person who acquires a real right by onerous title, relying in good faith on an entry in the registers, is secure in his acquisition.

3328. Notice given or knowledge acquired of an unpublished right requiring publication can never compensate for lack of publication and cannot prejudice the rights of third persons in good faith.

3329. Lack of publication may be set up by any interested person against any person, even a minor or a person under protection, as well as against the state.

3330. Every interested person may apply to the court, in case of error or omission or for any other reason, to rectify or set aside an entry.

Upon deposit of the final judgment, the registrar shall rectify or cancel the entry, but the judgment does not adversely affect either the rights of a third person in good faith who, relying on the registers, acquired a right in the property concerned by onerous title, or those acquiring from him by particular title.

CHAPTER III

ADVANCE ENTRY

3331. Any judicial demand respecting an immovable real right or a movable right secured by a registered hypothec may be the subject of advance entry in the registers.

3332. Where a person is, without his fault, prevented from registering a right under a will by the concealment, destruction or contestation of the will or any other obstacle, he may make advance entry of his right.

3333. Advance entry is made by depositing a notice of the judicial demand containing a designation of the property, or a notice indicating the nature of the right under the will and of the obstacle to registration.

3334. The rights which are the object of the judgment or transaction terminating the action are deemed published from the time of their advance entry, provided they are published within thirty days after the judgment becomes *res judicata* or the transaction takes place.

A right under a will that was prevented from being registered is deemed published from the time of its advance entry, provided the will is registered within thirty days after the obstacle is removed or after the will is obtained or probated.

CHAPTER IV

PUBLICATION BY REGISTRATION

SECTION I

PRELIMINARY FORMALITIES

3335. The notary before whom a deed respecting a publishable right is executed is bound to certify that he has verified the identity, quality and capacity of the parties, and that the instrument fully represents the will of the parties, particularly as to the right to be published.

A land surveyor is similarly bound in respect of the instruments which he prepares.

3336. An instrument in private writing presented for registration must indicate the date and place of making and be accompanied with a declaration signed by a notary or an advocate certifying that he has verified the identity, quality and capacity of the parties and that the instrument fully represents the will of the parties, particularly as to the right to be published.

3337. The certificate of verification issued by the notary, advocate or land surveyor must be affixed to the deposited abstract or document or be deposited with it; it must set forth the names of the parties to the verified instrument, the date and place of birth and domiciliary address of each and, where such is the case, the registration number in the registry of associations and enterprises.

If one of the parties is a legal person, the certificate must set forth its name, domiciliary address and legal form.

3338. No certificate of verification is required for the registration of declarations of family residence or leases of immovables, or for the registration of notices under this Book or the Book on Preference and Hypothec, except notices required for the registration of legal hypothecs.

SECTION II

REGISTRATION

§ 1.—*General*

3339. Authentic instruments and instruments in private writing may be registered.

3340. Instruments drawn up in a language other than French or English must be accompanied with a translation certified in Québec to be faithful.

3341. Registration is effected by deposit of an abstract or, where expressly provided by law, deposit of the document, and by entry in the appropriate register.

3342. The abstract must be accompanied with the original in the case of a notarial deed *en brevet* or a deed in private writing, or with an authentic copy or extract in the case of an authentic deed other than a notarial deed *en brevet*.

A person requesting registration by deposit of a document must present two duplicates in the case of a notarial deed *en brevet* or an instrument in private writing, or two authentic copies or extracts in the case of an authentic deed other than a notarial deed *en brevet*.

In all cases, the documents presented must be accompanied with the appropriate supporting documents, such as authorizations, resolutions or powers of attorney.

§ 2.—*Abstracts and notices*

3343. An abstract is a summary of a document the publication of which is requested; it must be signed by the person requesting the registration or his mandatary.

The abstract must set forth

(1) The date and place of making, the name and address of the notary, advocate or land surveyor who signed the certificate of verification, and, where such is the case, the minute number of the deed;

(2) The registration number of the title deed establishing the right on which the grantor is relying, if any;

(3) In the case of a judgment, the court which rendered it, the judicial district and the number of the record;

(4) The name, address, and the date and place of birth of each of the parties to the deed and, where such is the case, the registration number in the registry of associations and enterprises; if one of the parties is a legal person, its name, domiciliary address, registration number in the registry of associations and enterprises and legal form;

(5) In the case of immovable property, its designation; in the case of movable property, its nature, class or quality, value, serial number, if any, and location; in the case of a universality of movable property, the number and quantity of properties of each class or quality, where applicable, and any other particular allowing it to be distinguished from other property of the same kind;

(6) The nature and extent of the right, and the fact that it is a floating hypothec where that is the case;

(7) The value of the obligation, the value of the hypothec, and the rate of interest, if any;

(8) Any term for which the right is created or renewed;

(9) Any qualification of the real right, such as a clause of resolution, resiliation, revocation or conditional extinction;

(10) Any grounds for subrogation.

3344. Where the right intended to be published is evidenced in several documents, one abstract is sufficient, nor need the designation of the parties or properties be set forth more than once.

The same rule applies where several rights in one or several properties concern the same creditor or acquirer and derive from the same person, or where several rights of succession in the same property are transferred to the same person.

3345. One abstract is not sufficient for the registration of non-complementary or unrelated documents.

3346. A notice required by this Code which is deposited for registration must be dated, bear the name and address of the person giving it and the name and address of the creditor, grantor of the hypothec or debtor, as the case may be, and be signed by the person giving it.

It must also specify the registration number, if any, of the right concerned, the designation of the property or, as the case may be, the nature of the universality, and any other particulars required for compliance with the provision under which it is given.

§ 3.—*Registers*

3347. Entry of an immovable right is made in the land register of the registry office of the registration division where the immovable is situated.

3348. The entry of any other right requiring registration is made in the register of personal and movable rights by deposit of the required documents at the registry office of a registration division where a computerized system is used; if the right concerns an immovable, it is entered in the land register as well.

3349. Before crystallization, a floating hypothec is entered in the register of personal and movable rights and, if it is a charge on an immovable, in the land register.

3350. A movable hypothec is entered in the register of personal and movable rights under the name of the debtor; the entry must indicate, where applicable, the serial number of the property, with the trademark or the name of the manufacturer or distributor.

3351. Entry of renunciation of a succession, legacy, community of property or division of acquests is made in the register of personal and movable rights and also, if it concerns an immovable, in the land register.

3352. Entry of a substitution is made in the register of personal and movable rights and, where applicable, in the land register.

§ 4.—*Special rules*

3353. Immovable real rights acquired by prescription are published by registration of the judgment recognizing them.

3354. A minute of determination of boundaries is registered with the judgment of homologation, if any. Where the contiguous lands are on the cadastre, the minute must state expressly that the boundary between the properties coincides with the boundary between the corresponding lots on the cadastre.

If the minute does not state that the boundaries coincide, the entry is without effect until an amendment to the plan is deposited in the registry office of the registration division and notice of the amendment is registered against the lots concerned.

3355. The deposit of a plan in the registry office under an Act requiring it is equivalent to publication of the plan, provided it is accompanied with a notice containing the designation of the immovable concerned, in accordance with the provisions of this Book.

The foregoing provision does not apply to the deposit of cadastral plans under this Book, the Cadastre Act or the Act to promote the reform of the cadastre in Québec.

3356. The rights by succession of an heir or particular legatee in an immovable are published by registration of a declaration, and of the will, if any.

The declaration must be in authentic form *en minute*.

3357. The declaration of an heir or particular legatee must set forth the name and last domiciliary address of the deceased, his date and place of birth and of death, and his matrimonial regime, if any.

It must also set forth whether the succession is legal or testamentary, the quality of the declarant as heir, legatee or spouse, the degree of relationship between each of the heirs and the deceased, any renunciations by any of the heirs, any deemed renunciations, the designation of the property, and the name of each heir and his right in the property.

3358. A notice of court ordered sale must be deposited for registration, except where notice of intention to pursue a remedy has been registered previously under the Book on Preference and Hypothec. Other notices of forced sale are subject to the same requirement.

3359. No copy of the deed evidencing the court ordered or forced sale of an immovable may be issued until the sale is registered in the land register, at the expense of the purchaser, by the person entrusted with the sale.

3360. The person entrusted with a sale for taxes must, within ten days after the sale, deposit, for registration, a list of the immovables sold, specifying the name and address of the purchaser and of the last owner of each immovable sold.

The registrar shall enter the sale in the land register, indicating in the margin that it was a sale for taxes.

3361. A hypothec acquired by subrogation or assignment of a hypothecary claim is registered by registering the subrogation or assignment in the registry office where the hypothec is published.

A copy or extract of the instrument of subrogation or assignment bearing a certificate of registration must be furnished to the debtor.

If these formalities are not observed, the subrogation or assignment cannot be set up against a subsequent assignee who has observed them.

3362. Where subrogation to a hypothecary claim is acquired by operation of law, the hypothec is registered by registration of an abstract of the instrument from which the subrogation derives.

§ 5.—*Duties of the registrar*

3363. The registrar shall receive the documents presented for registration. He shall, first, enter them in the entry book in order of receipt and assign a registration number to each; then, in the same order, he shall carry out the other formalities prescribed by law.

Where the documents presented are clearly unacceptable for registration, the registrar shall refuse them immediately, without making any entry in the entry book; he shall give notice, with reasons, to the person requesting registration and return the documents to him.

3364. After entering the presented documents in the entry book, the registrar shall ascertain that they contain the particulars which must be included in the abstract or registration certificate and do not contain any error as to content in that respect. On discovering an omission or error, he must refuse to proceed, note that fact in the entry book, give notice with reasons to the person requesting registration and return the documents to him.

Where the presented document is a notice, the registrar must refuse to proceed if it does not contain the required particulars or is irregular in any other way.

3365. Where examination discloses any discrepancy between the abstract and the document it summarizes, or any other irregularity, the registrar shall enter in the registers the rights set forth in them, the publication of which is requested, but note that the entry is provisional.

The registrar shall keep the presented documents and immediately notify the person requesting registration that the entry is provisional; the person has fifteen days from sending of the notice to remedy the irregularity.

If the irregularity is not remedied in the prescribed time, the registrar shall strike out the entry and return the documents to the person requesting registration; if it is remedied, the provisional entry has effect from the original deposit of the presented document.

3366. The registrar shall certify that a document presented with an abstract has been registered by inscribing "registered by abstract" on the document.

Where registration is effected by deposit of the document, it is certified on a copy or duplicate of the document.

The registrar shall note an advance entry on the certified copy where such is the case.

3367. The registration certificate must indicate the year, month, day, hour and minute of registration, and the registration number.

It must bear the signature of registrar and its date of issue.

3368. The registrar shall enter in the registers day by day the rights the publication of which is requested, as set forth in the documents deposited during office hours.

3369. Unless otherwise ordered by the court, the registrar shall not enter in the land register rights indicated in a document deposited for registration before ascertaining that the title of the grantor or last holder of the right concerned has been published or, in the case of the state, that it is presumed.

Leases of immovables, hypothecs and rights acquired without a title deed, by accession, in particular, are not subject to the foregoing provision.

3370. The registrar must make a note of any subrogation or assignment of a hypothecary claim in the margin of the entry of the hypothec, with its registration number.

3371. The registrar, upon receipt for deposit of a notice of change of name of the holder of a registered right with a copy of the decision recognizing the change, shall make a note of the change in the appropriate register.

3372. The registrar has no authority to correct clerical errors in the registers or in registration certificates except by consent of all the interested persons; failing such consent, he or any interested person may apply to the Registrar General for authorization to that effect. On making any correction, the registrar shall indicate the date.

§ 6.—*Special rules on registration of personal
and movable rights*

3373. Where documents are presented for registration in the register of personal and movable rights, the registrar shall make the necessary entries in the entry book kept by the Registrar General and make the verifications required by law; he shall himself make the necessary entries in the register of personal and movable rights and issue the certificate of registration.

Next, the registrar shall transmit to the Registrar General, for conservation, the abstract or a copy or duplicate of the document presented for registration.

§ 7.—*Renewal of registration*

3374. Registration may be renewed on the application of any interested person. Renewal is made by the deposit of a notice identifying the document, giving its original registration date and number, the designation of the property concerned and any other particulars.

A hypothec may also be renewed by registration of an abstract of an instrument by which a person makes an acknowledgement of debt or assumes liability for a debt.

3375. The registrar shall enter the notice of renewal in the registers, note the renewal in the margin of the original entry and issue a certificate of registration by inscription on the notice.

3376. Where the original document was registered in another registration division and no copy has been transmitted to the registry office of the division concerned, the notice must identify the other division.

In such a case, the registrar shall transmit a copy of the notice to the registry office of the registration division where the document was originally registered, for entry in the registers by the registrar with an indication of where the notice is registered.

CHAPTER V

REGISTERS

SECTION I

EXAMINATION OF REGISTERS

3377. The registers may be examined at the registry office during office hours, on payment of a fee.

3378. The registrar is bound to issue a photocopy of any document contained in the registers to any person requesting it, on payment of a fee.

He is also bound to issue to any person requesting it a certificate of the registration or deposit of a document, indicating the minute, hour, day, month, and year of the registration or deposit, and the registration number. The certificate shall be affixed to a copy of the document registered or deposited.

3379. Any person may, on payment of a fee, obtain from a registry office where a computerized system is used a certified statement of the rights entered in the register of personal and movable rights in respect of a person or property. The statement is a computerized print-out of the entries in the register.

3380. The registrar cannot surrender the registers or documents of which he is the depositary, remove them for inspection outside the registry office or be required to produce them or any copy of them except in judicial proceedings in improbation or in contestation of the authenticity of a document.

The registrar may, on the order of the Minister of Justice or of a person designated by him, temporarily surrender the registers or documents of which he is the depositary to facilitate their replacement or reconstitution.

3381. The Government shall, by order, fix the charges payable for examination of the registers, the issue of photocopies, computer print-outs and certificates, and registration fees.

The Minister of Justice shall, by order, prescribe the working days and office hours of registry offices.

SECTION II

REGISTERS KEPT BY THE REGISTRAR

§ 1.—*General*

3382. In every registry office, the registrar shall keep the following registers: an entry book, a land register and a register of addresses.

In addition, the Registrar General shall keep, for the whole territory, a computerized register of personal and movable rights and the related entry book.

3383. The Minister of Justice may, by order, prescribe the necessary forms for registration and the form and content of every register kept by a registrar; he may also prescribe new registers or forms.

§ 2.—*Entry book*

3384. In the entry book are entered the year, month, day, time and minute of the deposit of each document, the date of the document and the registration number assigned to it, the names of the parties, the nature of the right for which registration or cancellation is requested and the lot number of the immovable or a short description of the property concerned.

§ 3.—*Land register*

3385. The land register of a registration division consists of the land books for all the cadastres within the limits of the division, one for each cadastre.

Each land book contains a land file for each lot on the cadastral plan.

3386. Every land file contains a land slip bearing the name of the holder of the right and his date and place of birth and listing the entries and cancellations on the lot.

It also contains the documents supporting the entries made on the land slip and any particulars prescribed by municipal laws, such as the address, assessment and municipal zoning.

3387. The land file contains further a reduced plan of the lot concerned, showing the dimensions and area, astronomical north, the

metes and bounds, the name of the land surveyor who prepared the plan and the date of its deposit in the registry office.

The plan of an immovable in divided co-ownership must also indicate the location of the exclusive part in relation to the common parts, its volume, and any other particulars prescribed by law

3388. The land file must contain a land slip in the name of each holder of a right of emphyteusis, usufruct or use established on an immovable; the same applies in the case of undivided co-ownership where the share of each undivided co-owner is specified in the indivision agreement.

3389. Where a territory in a registration division is without cadastral survey, the register shall contain only one additional land book.

This land book consists of as many land files as there are parts of the territory without cadastral survey, even if those parts belong to the same owner, provided that each part is under a separate title.

3390. For a territory without cadastral survey, the land file is identified by the name and date of birth of the owner and by the registration number of the first title of ownership entered on the land slip.

The file contains the same particulars and documents as are prescribed for the land file of lots on the cadastre, except the plan.

3391. The owner of several contiguous immovables situated in territory without cadastral survey in the same registration division may require the registrar to amalgamate the files opened for each immovable into a single file, if none of the immovables is charged with a real right in favour of a third person.

He must deposit for registration a requisition identifying all the amalgamated parcels of land and the related files.

The registrar shall thereupon transfer to a new land slip all entries on the old slips and identify the new land file by the registration number of the first title of ownership entered on the new slip.

3392. Each land slip in the land file shall be authenticated, before an entry is made on the slip, by a certificate stating the name of the registration division, the name of the cadastre and the lot number or, where such is the case, the registration number of the first title of ownership entered on the slip.

§ 4.—*Register of addresses*

3393. The registrar shall keep a register of addresses containing notices of address transmitted to him by preferred or hypothecary creditors or by the assignees, heirs, particular legatees or donees of such creditors, by the holders of real rights or by spouses who register a declaration of family residence or any beneficiary under such a declaration.

3394. Where notice of address has been entered in a registration division by a legal person registered in the registry of associations and enterprises, the legal person shall give notice of its address, in any deed or document evidencing a hypothec in its favour on an immovable located in the same registration division, by referring to the registration number of that notice. A trustee shall do likewise where the deed or document concerns a trust.

For a hypothec on a movable, reference is made to the number of the notice of address previously entered in the register of personal and movable rights.

On a change of address, the person or trustee shall notify the registrar and apply for replacement of the notice filed previously. The new notice shall be registered under the original registration number.

3395. Registration of notice of address is effected by deposit of a duplicate of the notice in the registry office.

3396. The number of each notice is noted in the land file or in the register of personal and movable rights, as the case may be.

§ 5.—*Register of personal and movable rights*

3397. The Registrar General shall keep, for the whole territory, a register of personal and movable rights in which shall be entered, in alphabetical order, persons named in instruments the registration of which in that register is required by law or in instruments not entered in the land register, with the date and place of birth and address of every such person, the designation of the property concerned, the registration number of the instrument and the date and time of entry in the register.

Also to be entered are the nature of the documents registered and of the rights set forth in them, the registration number of the legal person or trustee in the registry of associations and enterprises, and the serial number of the property, if any.

CHAPTER VI

REGISTRATION OF IMMOVABLES

SECTION I

CADASTRAL PLAN

3398. The cadastral plan is drawn up in accordance with the Cadastre Act; it is presumed accurate.

In case of discrepancy between the boundaries shown on the plan and those indicated in any documents deposited, those on the plan are presumed accurate.

3399. Every cadastral plan must be remitted to the Minister of Energy and Resources, who, if satisfied that it complies with the law, shall deposit it in the registry office.

3400. No right of ownership may be registered in the land register unless it is identified by a separate lot number on the cadastre.

Dismemberments of the right of ownership need not be so identified, except emphyteusis where divided co-ownership is established on the immovable.

3401. Mining rights, cutting rights and forest concessions on lands of the state are described and registered in accordance with the laws governing them.

3402. Railway lines and gas, water, electricity and telephone systems are identified on the cadastral plan.

3403. From deposit of a cadastral plan in a registry office, the number assigned to a lot is its sole designation and is sufficient designation in any document referring to it.

3404. Where an instrument may be registered on part of a lot, the part must be described by metes and bounds and its dimensions, and the description must indicate whatever is necessary to locate the part on the ground.

Where a parcel of land consists of parts of several lots identified on the cadastre, each part of a lot also must be described in the same manner.

3405. The description of part of a lot as the remainder after alienation of other parts of the lot is not sufficient in an instrument requiring registration or that may be registered.

3406. In territory without cadastral survey, land must be described by metes and bounds and its dimensions, and the description must indicate whatever is necessary to locate the land on the ground. The designation must also refer to the registration number, if any, of the first title of ownership entered in the land file.

3407. The registrar shall not register a declaration of divided co-ownership unless a cadastral plan has been made of the immovable concerned and an identifying lot number has been assigned to each of the exclusive parts and to each of the common parts.

Where the exclusive and common parts to be identified are parts of an immovable in vertical co-ownership, the foundations and main walls of the building in which they are situated must allow measurement of their boundaries before deposit of the cadastral documents.

3408. A person authorized to expropriate must deposit a plan assigning separate numbers to the required part and to the remainder.

The plan need not be certified by the owner, but it must be certified by the person authorized to expropriate.

No transfer contemplated by the Expropriation Act nor conveyance of the required part of the lot may be registered before the plan is deposited in the registry office of the registration division.

SECTION II

CADASTRAL AMENDMENTS

§ 1.—*Kinds of amendment*

3409. The owner of lots under a registered title may certify a plan to renumber them and remit it to the Minister of Energy and Resources; the plan must show the correspondence between the old and new lot numbers.

If the plan complies with the law, the Minister shall annotate the old plan to show the correspondence between the old and new lot numbers. He shall certify a copy of the new plan and deposit it in the registry office of the registration division, and the registrar shall enter

the corresponding numbers in the land register under both the old and the new lot numbers.

Where part of a lot is replaced, the new plan must indicate the registration number of the title to that part, if any.

This article has no effect on existing rights on a renumbered lot; exercise of the rights may continue against the part of the new lot previously subject to them.

3410. A person replacing lot numbers must give notice of deposit of the plan, by registered or certified mail, to the hypothecary creditors and holders of real rights having given notice of address in respect of a replaced lot or part of a lot.

He must also in the same manner give notice of the deposit to every beneficiary of a declaration of family residence having registered a notice of address.

3411. A registered owner amending a cadastral plan to redivide a lot must certify the new plan, which must be accompanied with the consent of the holders of real rights in the lot concerned.

If he amends the plan to subdivide a lot, he must also certify the new plan, but need then accompany it only with the consent of the creditors holding a hypothec on the immovable.

3412. Any amendment involving renumbering must be entered in the land register by the registrar, under the old lot numbers.

In case of replacement, the registrar shall enter the corresponding numbers between the replaced part of a lot and the new lot number after the latest entry; he shall also enter between parentheses the registration number of the title to that part of the lot appearing on the new plan.

§ 2.—*Transfer of entry of rights*

3413. The transfer of entry of the right of ownership and of the other real rights in a lot following deposit of an original plan or renewal plan takes place upon the first alienation *inter vivos* of the lot or the registration of the first conventional hypothec.

The transfer of entry of the rights is effected by the registrar, in accordance with a report updating the land file of the lot concerned

or with the decision of the Registrar General, or with a judgment determining the rights in the lot.

Rights the entry of which is not so transferred in the land file are extinguished.

3414. The updating report of the land file of a lot is prepared by the notary chosen by the parties to the instrument of alienation or hypothec.

In preparing the report, the notary must verify the rights of ownership and other real rights in the lot, verify the location certificate of the land surveyor and, so far as possible, verify the capacity of the parties to the instruments registered against the lot.

The report must indicate which rights must be subject to transfer of entry and which are uncertain or are extinguished otherwise than by cancellation, and it must give reasons.

3415. The updating report shall be filed with the registrar at the registry office of the registration division where the immovable is situated; the registrar shall transfer the entry of the rights which are maintained in the land file, if the report leaves no doubt as to the nature and quality of the subsisting or extinguished rights.

If the report leaves room for doubt, the registrar must notify the persons who may have a right of ownership or any other real right in the lot, or the persons in possession, that the report has been filed. In so doing, he shall advise them that they must within three years obtain confirmation of their titles, establish valid possession or contest the validity of the report, or file proof that their proceedings are pending. The notification is made by registered or certified mail, or by public notice if the address of the persons who must be notified is unknown.

3416. At the expiry of three years and failing any judgment or proof that proceedings are pending, the Registrar General shall decide as to the transfer of entry of the right of ownership or other real rights, or as to the acknowledgement of possession.

SECTION III

ALIENATION OF PART OF A LOT

3417. On receipt of a document evidencing alienation *inter vivos* of part of a lot, the registrar shall make an entry in the entry book

and indicate that it is a provisional entry; he shall make no entry in the land register.

He shall certify receipt of the document and absence of entry in the land register.

3418. Rights set forth in a document evidencing alienation of part of a lot cannot be set up against third persons until, by amendment, that part is assigned a separate number on a plan deposited in the registry office and until registration of notice that the number assigned by the amendment is the number given to the part of the lot contemplated in the document.

On deposit of the amended plan and the notice, the registrar shall make the verifications required by law and, where applicable, enter the right set forth in the document in the land register, and issue the registration certificate.

The registrar shall thereupon note in the margin of the provisional entry that entry has been made in the land register. He shall also, in the margin of the entry of the registered right, note the registration number of the notice.

3419. On the recommendation of the Minister of Energy and Resources, the Government, by order and on such conditions as it may prescribe, may allow entry in the land register of the alienation of a part of a lot situated in an agricultural zone created under the Act for the preservation of agricultural land, or situated over 345 kilometres from the registry office of the registration division to which it belongs.

3420. The registrar shall transmit to the Minister of Energy and Resources a copy of any document setting forth a right which he has entered in the land register on the authority of the order.

On receipt of the document, the Minister shall prepare the amendment providing a separate number on the plan to each part of a lot resulting from the alienation. Notice of deposit of the plan must be registered.

The registrar shall, in the margin of the entry of the alienation, note the registration number of the notice.

CHAPTER VII

CANCELLATION

SECTION I

GROUNDS FOR CANCELLATION

3421. Cancellation may be by agreement or, failing that, judicial; it may also be legal.

3422. The entry of an extinguished hypothec shall be cancelled on the demand of any interested person by the deposit for registration of a requisition to that effect. In the case of an immovable hypothec, the requisition must be in notarial form *en minute*.

3423. The legal hypothec of the persons having participated in the construction or renovation of an immovable shall be cancelled on the demand of any interested person by the deposit for registration of a requisition to that effect, where no action has been brought against the owner of the immovable within the prescribed time.

3424. Entry of a declaration of family residence shall be cancelled on the demand of any interested person, but only in the following cases: where the spouses consent, one of the spouses has died and the succession is liquidated, the spouses are separated from bed and board or divorced, the marriage is annulled, or the immovable has been alienated with the consent of the spouses or by leave of the court.

3425. The court may order the cancellation of an entry made without right or irregularly, or on the basis of a void title or a title irregular as to form where the registered right has been annulled, rescinded, resiliated or extinguished by prescription or otherwise.

It may order cancellation also where the immovable against which a declaration of family residence had been declared has ceased to serve that purpose.

3426. The court may also order cancellation of the entry of a final judgment rectifying or annulling an entry where the judgment adversely affects the rights of a third person in good faith who, relying on the registers, has acquired, by onerous title, a right in the property concerned, or the rights of acquiring from him by particular title.

3427. Total discharge of a debt entails consent to its cancellation. Partial discharge entails consent to only a reduction by the same amount.

The creditor is bound to register the discharge if he receives a sufficient amount to pay the costs of registration and mailing; he cannot claim any other amount, notwithstanding any provision to the contrary.

3428. Reduction of a hypothec securing a claim to be paid by a sum of money tendered and deposited for that purpose is made by deposit for registration of the judgment authorizing the tender and deposit.

SECTION II

CERTAIN CASES OF CANCELLATION

3429. Entry of a hypothec securing a life annuity or life usufruct cannot be cancelled without the consent of the annuitant or usufructuary; after his death, a person demanding cancellation must file the certificate of death and a solemn declaration as to the identity of the annuitant or usufructuary.

3430. Entry of a hypothec in favour of the state is cancelled or reduced following deposit for registration of a certificate of the Attorney General or Deputy Attorney General of Québec, or of a person designated by the Attorney General, stating that the hypothec is extinguished or reduced.

It is also cancelled by the deposit for registration of a certificate of the Minister or Deputy Minister of Revenue of Québec, or of a person designated by the Minister of Revenue, stating that the hypothec is extinguished or reduced, if the hypothec was created by virtue of an Act under the administration of that Minister.

It may further be cancelled by the deposit for registration of an order of the Gouvernement du Québec, certified by the clerk of the executive council.

3431. Entry of rights extinguished by court ordered sale or forced sale shall be cancelled following registration of the sale. All entries of minutes of seizure, notices of sale and notices of intention to pursue a remedy under the Book on preference and hypothec are thereupon cancelled.

Where the sale is not proceeded with, the entries of minutes of seizure and notices are cancelled only by registration of a certificate

attesting to that fact issued by the prothonotary or by the person designated to proceed with the sale.

3432. Entry of a sale for taxes is cancelled following deposit of the deed of sale entered into by the municipal authority or by the instrument evidencing the redemption of the immovable.

SECTION III

PROCEDURE AND EFFECTS OF CANCELLATION

3433. Registration of documents presented with a view to cancellation is made by deposit of the documents together with the supporting documents.

3434. A document evidencing consent to a cancellation or discharge may be made in notarial form or by private writing.

A document evidencing reduction of a hypothec may be made in the same way.

3435. The registrar shall enter every cancellation or reduction under this chapter and make an entry of it in the margin of the original entry in the appropriate register.

3436. A judgment of nullity, resolution, resiliation, revocation or extinction of a registered right cannot be invoked in support of a demand for cancellation unless it is accompanied with a certificate that it has not been appealed and the time for appeal has expired.

The judgment must also be served on the defendant, in the usual manner, before the deposit, although a judgment rendered under article 805 of the Code of Civil procedure with the consent of the parties or their failure to appear shall not be served unless the judge so orders.

3437. Consent to cancellation of the entry of a principal right authorizes cancellation of the entry of rights accessory to that right and all references to those entries appearing in the registers, provided these references are identified by the registration number of the document containing them.

3438. Cancellation without right or by error may be annulled by order of the court on the motion of any interested person.

Annulment of cancellation cannot adversely affect the rights of a third person in good faith who published his right after the cancellation.”

3. This Act will come into force when and as prescribed in the Act respecting the application of the Civil Code of Québec.

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