

Übersetzung durch Karen Guida. Laufende Aktualisierung der Übersetzung durch Eileen Flügel.

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Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 1 des Gesetzes vom 24. Oktober 2024 (BGBl. I, Nr. 329)

Version information: The translation includes the amendment(s) to the Act by Article 1 of the Act of 24 October 2024 (Federal Law Gazette I, no. 329)

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Act on Enforced Auction and Receivership

(Gesetz über die Zwangsversteigerung und die Zwangsverwaltung – ZVG)

Act on Enforced Auction and Receivership, as last amended by Article 1 of the Act of 24 October 2024 (Federal Law Gazette I, no. 329)

Part 1

Enforced auction and receivership of plots of real estate through compulsory enforcement

Title 1

General provisions

Section 1

(1) As to the enforced auction and the receivership of a plot of real estate, the local court in the district of which the plot of real estate is situated has jurisdiction as the court responsible for execution.

(2) The *Land* governments are authorised to allocate matters concerning enforced auction and receivership to one local court for the districts of several local courts by statutory instrument to the extent the consolidation is necessary for material furtherance and expedited conduct of the proceedings. The *Land* governments may delegate this authorisation by statutory instrument to the *Land* departments of justice.

Section 2

(1) If the plot of real estate is situated in the districts of several local courts or if it is uncertain which court has jurisdiction in respect of the boundaries of the districts, the next higher court is to designate one of the local courts as the court responsible for execution; section 36 subsections (2) and (3) and section 37 of the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly.

(2) The same order may be issued when the enforced auction or the receivership of several plots of real estate is admissible in the same proceeding and the plots of real estate are situated in the districts of different local courts. As a general rule, the court designated as the court responsible for execution must notify the remaining courts of such designation.

Section 3

Service is effected *ex officio*. This may take place by way of registered mail with acknowledgement of receipt. The acknowledgement of receipt is sufficient as verification of service.

Section 4

If the intended recipient of the service does not reside at either the location or in the district of the court responsible for execution, service may be effected by service by mailing as long as the appointment of an attorney of record or an authorised recipient who resides there has not been notified to the court. "Registered mail" is to be stated on the documents mailed.

Section 5

The designation of an authorised recipient of service with the land registry is also applicable in the proceedings before the court responsible for execution to the extent this information is known to it.

Section 6

(1) If the place of residence of the intended recipient of the service and the place of residence of his or her authorised recipient of service are unknown to the court responsible for execution or if the prerequisites are met for service by publication for other reasons (section 185 of the Code of Civil Procedure), the court is to designate a substitute recipient of service for the intended recipient of the service.

(2) The same applies in the event of service by mailing if the item is returned as undeliverable. As a rule, the returned mail is to be delivered to the substitute recipient of service.

(3) In lieu of the designation of a substitute, it is sufficient if as to persons who do not have capacity to sue and be sued service is ordered to be effected on the family court or adult guardianship court and as to a legal person or organisation that has capacity to sue and be sued on the supervisory authorities.

Section 7

(1) Service is effected on the substitute recipient of service as long as the intended recipient of the service has not been determined.

(2) The substitute recipient of service is under an obligation to determine and inform the intended recipient. He or she may request remuneration for his or her work and reimbursement of his or her expenses. The court responsible for execution decides on the remuneration and reimbursement of expenses.

(3) The creditor is liable for the reimbursement of expenses insofar as the substitute recipient of service cannot request reimbursement from the intended recipient; the expenses to be borne by the creditor are part of the costs of the legal proceeding the goal of which is satisfaction from the plot of real estate.

Section 8

The provisions in sections 4 to 7 are not applicable to service to be effected on the debtor of the court order by way of which compulsory enforcement is ordered or the joinder of a creditor is admitted.

Section 9

In addition to the creditor and debtor, the following are deemed to be parties involved in the proceedings:

1. those persons as to whom at the time of entry of the notice of enforcement a right in the land register has been entered or has been secured by entry;
2. those persons who have a right that is contrary to the compulsory enforcement, a right in the plot of real estate or in a right encumbering the plot of real estate, a claim with a right to satisfaction from the plot of real estate, or a rental or lease right based upon which the plot of real estate has been handed over to them, who have registered with the court responsible for execution and upon request of the court or a party credibly demonstrate such right.

Section 10

(1) A right to satisfaction from the plot of real estate is granted in accordance with the following order of rank and in the case of equal rank, in proportion to their amounts:

1. the claim of a creditor pursuing the receivership of a plot of real estate for reimbursement of his or her outlays for maintenance or necessary improvement of the plot of real estate, in the case of an enforced auction, however, only when the administration continues until the knockdown and the outlays cannot be reimbursed from the usufructs of the real estate;
- 1a. in the case of an enforced auction where insolvency proceedings concerning the debtor's assets have been opened, the claims for reimbursement of costs for establishing the movable objects encompassed by the auction that are part of the insolvency estate; these costs are to be charged only when an insolvency administrator has been designated and are to be fixed as a lump sum of four per cent of the value established in accordance with section 74a subsection (5) sentence 2;
2. upon enforcement against residential property, the claims arising therefrom for payment of amounts for the charges and costs of the joint property or the separate property owed under section 16 subsection (2) and section 28 subsections (1) and (2) of the Residential Property Act (*Wohnungseigentumsgesetz*) including advance payments, reserves, and the recourse claims of individual property owners. The preferential right encompasses both current amounts and amounts in arrears from the year of the seizure and the past two years. The preferential right including all ancillary payments is limited to amounts not larger than five per cent of the value established in accordance with section 74a subsection (5). Registration is made jointly by the residential property owners. The recourse claims of individual residential property owners are to be registered by such persons;
3. claims for the payment of public charges on the plot of real estate based upon amounts in arrears from the past four years; periodic payments, in particular real estate taxes, interest, surcharges, or payments on annuity land charges, as well as amounts to be paid toward the gradual repayment of a debt as a surcharge on the interest enjoy this preferential right only in respect of current amounts and arrears from the past two years. Public charges on the plot of real estate, regardless of whether they relate to federal or *Land* law, have equal rank among one another. The provisions of section 112 subsection (1) and sections 113 and 116 of the Equalisation of Burdens Act (*Gesetz über den Lastenausgleich*) of 14 August 1952 (Federal Law Gazette I page 446) remain unaffected;
4. claims arising from rights in the plot of real estate to the extent they are not ineffective vis-à-vis the creditor as a result of the seizure, including claims for amounts to be paid toward the gradual repayment of a debt as a surcharge on interest; claims for periodic payments, in particular interest, surcharges, administrative costs or payments on annuity land charges enjoy the preferential right

of this class only based upon current amounts and amounts in arrears arising during the past two years;

5. the creditor's claim to the extent it cannot be satisfied in one of the previous classes;
6. fourth-class claims to the extent they are ineffective vis-à-vis the creditor as a result of the seizure;
7. third-class claims based upon older arrears;
8. fourth-class claims based upon older arrears;

(2) There is also a right to satisfaction from the plot of real estate as to the costs of the notice of redemption and the legal proceedings necessary for satisfaction from the plot of real estate.

(3) For the enforcement of the rank in accordance with subsection (1) no. 2, a title from which the duty of the debtor to make payment, the type and reference period of the claim, and the due date are recognisable is sufficient. To the extent the type and reference period of the claim as well as its due date are not recognisable from the title, they are to be credibly asserted in another suitable manner.

Section 11

(1) If claims in the same class arising from different rights under section 10 nos. 4, 6 or 8 are to be satisfied, the decisive order of priority for them is that which exists among such rights.

(2) In the fifth class, in the case of more than one claim, the claim as to which the seizure was effective earlier has priority.

Section 12

Claims arising from one and the same right have the following rank among one another:

1. claims to reimbursement of the costs designated in section 10 subsection (2);
2. claims to periodic payments and other ancillary payments;
3. the principal claim.

Section 13

(1) Current amounts of periodic payments are the last amount that became due prior to the seizure as well as those amounts that later become due. Older amounts are arrears.

(2) Subsection (1) is applicable regardless of whether the claims are related to periodic payments under public or private law or if they concern federal or *Land* law or whether the statutory provisions set time periods that differ from those in section 10 subsection (1) nos. 3 and 4; shorter time periods than those set forth in section 10 subsection (1) nos. 3 and 4 are always calculated retrospectively from the last due date prior to the seizure.

(3) If there was no due date within the past two years, the time of the seizure is decisive.

(4) If there has been more than one seizure, the first in time is decisive. In the case of an enforced auction, when receivership had taken place up until the seizure, the seizure effectuated for this one is to be deemed to be the first.

Section 14

Claims for unspecified amounts are deemed subject to the condition precedent of establishing the amount.

Title 2

Enforced auction

I.

Order for auction

Section 15

The enforced auction of a plot of real estate is ordered by the court responsible for execution upon application.

Section 16

(1) As a general rule, the application must designate the plot of real estate, the owner, the claim and the enforceable title.

(2) The documents necessary for the commencement of the compulsory enforcement are to be submitted together with the application.

Section 17

(1) Enforced auction may only be ordered when the debtor is entered as the owner of the plot of real estate or when he or she is an heir of the entered owner.

(2) Evidence of the entry is to be provided in the form of a certificate from the land registry. If both the court responsible for execution and the land registry belong to the same local court, reference to the land register is sufficient in lieu of a certificate.

(3) The succession is to be credibly demonstrated through documents insofar as it is not evident to the court.

Section 18

The enforced auction of more than one plot of real estate may occur within the same proceedings if it is pursued based upon a debt against the same debtor or based upon a right existing in each of the plots of real estate or based upon a debt as to which the owners have joint and several liability.

Section 19

(1) If the court orders the enforced auction, it is to concurrently request the land registry to enter this order into the land register.

(2) Subsequent to the entry of the note concerning the enforced auction, the land registry is to issue a certified copy of the page from the land register and the documents to which reference is made in the land register to the court, and it is to specify the authorised recipient of service it has designated and provide the information that it has concerning the place of residence and the address of the registered parties and their representatives. Attachment of the files or the documents is sufficient in lieu of issuance of a certified copy of the documents.

(3) As a general rule, the land registry must inform the court of any entries into the land register subsequent to the note concerning the order for enforced auction.

Section 20

(1) The order for enforced auction is applicable in favour of the creditor as a seizure of the plot of real estate.

(2) The seizure also encompasses those objects as to which the mortgage extends concerning the plot of real estate.

Section 21

(1) The seizure only encompasses agricultural and forestry products on the plot of real estate as well as the debt for an insurance of such products insofar as the products are still connected with the land or insofar as they are an accessory only to the plot of real estate.

- (2) The seizure does not encompass rental and lease debts or claims arising from a right to periodic payments connected to ownership of the plot of real estate.
- (3) The right of a lessee to the enjoyment of fruits and benefits is not affected by the seizure.

Section 22

- (1) The seizure of the plot of real estate becomes effective at the time the order for the enforced auction is served on the debtor. It also becomes effective at the time the request for entry of the note concerning the enforced auction is received by the land registry as long as the entry is made shortly thereafter based upon such request.
- (2) If the seizure encompasses a debt, the court, upon application by the creditor, is to prohibit the third-party debtor from making payment to the debtor. The seizure first becomes effective vis-à-vis the third-party debtor at the time at which it becomes known to him or her or the prohibition of payment is served on him or her. The provisions of section 845 of the Code of Civil Procedure apply accordingly.

Section 23

- (1) Seizure has the effect of a prohibition of disposition. If the seizure extends to movable property, however, the debtor may dispose of individual pieces within the limits of proper management and such disposal is to be effective vis-à-vis the creditor as well.
- (2) If, concerning a disposition in violation of the seizure as described in section 135 subsection (2) of the Civil Code (*Bürgerliches Gesetzbuch*), there is a question as to whether the person in whose favour the disposition took place knew of the seizure, knowledge of the application for an enforced auction is equivalent to knowledge of the seizure. Knowledge of the seizure is also deemed as established in consideration of the jointly liable movable objects as soon as the note concerning the enforced auction is entered.

Section 24

The debtor continues with the administration and use of the plot of real estate only within the limits of proper management.

Section 25

If there is a concern that proper management is endangered by the behaviour of the debtor, the court responsible for execution, upon application of the creditor, is to order the measures necessary to avert the danger. The court may set aside the measures when the monetary amount necessary for their continuation is not paid in advance.

Section 26

If an enforced auction is ordered based upon a claim arising from a registered right, a sale of the real estate effectuated subsequent to the seizure has no influence on the continuation of the proceedings against the debtor.

Section 27

- (1) If subsequent to an order for the enforced auction another application for the enforced auction of the plot of real estate is submitted, an order joining the applicant in the proceedings is issued instead of an order for an enforced auction. This order is not entered into the land register.
- (2) The creditor who has been allowed to join the proceedings has the same rights as if the enforced auction had been ordered based upon his or her application.

II.

Termination and temporary stay of proceedings

Section 28

(1) If the court responsible for execution becomes aware of a right that is evident from the land register which is contrary to the enforced auction or to the continuation of the proceedings, the court is to either immediately terminate the proceedings or to temporarily stay them, setting a time period within which the creditor must provide proof that the impediment has been removed. In the event of the latter, the proceedings are to be terminated upon the expiry of the time period if the proof has not been provided.

(2) If the court responsible for execution becomes aware of a restriction on disposition or a defect in enforcement, subsection 1 applies accordingly.

Section 29

The proceedings are to be terminated when the application for an auction is withdrawn by the creditor.

Section 30

(1) The proceedings are to be temporarily stayed if the creditor agrees with the stay. A stay may be agreed to more than once. If the proceedings have already been stayed twice based upon agreement by the creditor, another approval of the stay is deemed to be withdrawal of the application for the enforced auction.

(2) If the creditor agrees to the cancellation of the date of the enforced auction, this is deemed to be equivalent to approval of the stay.

Section 30a

(1) The proceedings are to be temporarily stayed for a maximum duration of six months upon application of the debtor if there is a prospect that as a result of the stay the auction will be avoided and if, given the personal and financial circumstances of the debtor and the type of debt, a stay would be equitable.

(2) The application is to be rejected if the temporary stay is not reasonable for the creditor pursuing compulsory enforcement in consideration of his or her financial circumstances, especially if it would give rise to a disproportionate disadvantage to him or her or if, in consideration of the nature or other circumstances regarding the real estate, it is to be assumed that at a later point in time an auction would result in significantly lower proceeds.

(3) A temporary stay may also be ordered with the condition that it ceases to be effective if the debtor does not make periodic payments that become due during the stay within two weeks of the due date. If an enforced auction is pursued by a creditor whose mortgage or land charge is within the first seven-tenths of the value of the real estate, the court may refrain from such an order only insofar as this is required for restoration of the regular financial status of the debtor in light of the particular circumstances of the case and it is reasonable in consideration of the creditor's total financial situation, especially his or her own interest payment obligations.

(4) The court may additionally order that the debtor must make payments on the arrears of periodic payments on specific dates.

(5) Finally, the court may make a temporary stay dependent on other conditions with the proviso that the temporary stay of the proceedings ceases to be effective in the event such conditions are not fulfilled.

Section 30b

(1) A temporary stay is to be applied for within a statutory period of two weeks. The period commences upon service of the ruling by which the debtor is informed of the right to submit

an application for a stay, the commencement of the time period, and the legal consequences of expiry of the time period without success. The information is to be served concurrently with the court order for the enforced auction when possible.

(2) The decision on the application for a temporary stay of the proceedings is to be made by way of a court order. Prior to the decision, the debtor and the creditor pursuing compulsory enforcement are to be heard; in suitable cases the court may schedule an oral hearing. The debtor and the creditor pursuing compulsory enforcement are to credibly demonstrate their statements upon request of the court.

(3) An immediate complaint against the decision is admissible; the opponent is to be heard prior to the decision.

(4) As a general rule, the date for the auction may only be announced subsequent to the court order rejecting a temporary stay becoming final and binding.

Section 30c

If the proceedings were stayed in accordance with section 30a, one-time repetition of the stay is admissible based upon section 30a unless stay would not be reasonable for the creditor in consideration of his or her total financial situation. Section 30b applies accordingly.

Section 30d

(1) If insolvency proceedings have been opened for the assets of the debtor, the enforced auction is to be temporarily stayed upon application of the insolvency administrator if:

1. in the insolvency proceedings the report meeting in accordance with section 29 subsection (1) no. 1 of the Insolvency Code (*Insolvenzordnung*) has not yet taken place,
2. the outcome of the report meeting in accordance with section 29 subsection (1) no. 1 of the Insolvency Code is that the plot of real estate is necessary in the insolvency proceedings for continuation of the business or for preparation of the sale of an operation or another collection of objects,
3. implementation of an insolvency plan that has been presented would be endangered by the auction, or
4. the auction would make reasonable disposal of the insolvency estate significantly more difficult in some other manner.

The application is to be rejected if the temporary stay would be unreasonable for the creditor in consideration of his or her financial circumstances.

(2) If the debtor has presented an insolvency plan and if the plan has not been refused under section 231 of the Insolvency Code, the enforced auction is to be temporarily stayed upon application of the debtor in accordance with the prerequisites in subsection (1) sentence 1 no. 3 and sentence 2.

(3) Section 30b subsections (2) to (4) apply accordingly with the proviso that the insolvency administrator takes the place of the debtor when the former has submitted the application and that the enforced auction is stayed when the prerequisites for a stay have been credibly demonstrated.

(4) If a provisional administrator has been appointed prior to the opening of the insolvency proceedings, the enforced auction is to be temporarily stayed upon his or her application when it has been credibly demonstrated that the temporary stay is required for the

prevention of detrimental changes in the debtor's assets. If a provisional insolvency monitor has been appointed, the debtor has the right to submit such application.

Section 30e

(1) The order for the temporary stay is to contain the condition that during the time after the report meeting under section 29 subsection (1) no. 1 of the Insolvency Code, the creditor pursuing compulsory enforcement is to be paid the current interest due to him or her within two weeks of the due date from the insolvency estate. If the auction proceedings had already been temporarily stayed prior to the opening of the insolvency proceedings in accordance with section 30d subsection (4), the payment of interest is to be ordered at the latest from the date three months after the initial temporary stay.

(2) If the real estate is used for the insolvency estate, upon application of the creditor pursuing compulsory enforcement, the court orders the further condition that the creditor is to be compensated for lost value from the time of the stay of the auction proceedings onwards through ongoing payments from the insolvency estate.

(3) Subsections 1 and 2 are not applicable insofar as, based on the amount of the debt and the value and other charges on the real estate, it cannot be expected that the creditor will be satisfied by the proceeds of the auction.

Section 30f

(1) In cases under section 30d subsections (1) to (3), the temporary stay is to be set aside upon the application of the creditor if the prerequisites for the stay are no longer fulfilled, if the conditions under section 30e have not been complied with, or if the insolvency administrator, in cases under section 30d subsection (2) the debtor, agrees with setting it aside. Further, upon application of the creditor, the temporary stay is to be set aside if the insolvency proceedings have ended.

(2) A temporary stay under section 30d subsection (4) is to be set aside upon the application of the creditor if the application for opening the insolvency proceedings has been withdrawn or refused. In all other cases, subsection (1) sentence 1 applies accordingly.

(3) Prior to a decision by the court, the insolvency administrator, in cases under section 30d subsection (2) the debtor, is to be heard. Section 30b subsection (3) applies accordingly.

Section 30g

(1) If the restructuring court has issued an order prohibiting the debtor's creditors from taking enforcement measures under section 49 (1) no. 1 of the Act on the Stabilisation and Restructuring of Businesses (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*) which includes the debtor's immovable property, the proceedings are to be temporarily stayed upon application by the debtor. The application is to be rejected if the temporary stay is not reasonable for the creditor pursuing compulsory enforcement in consideration of his or her financial circumstances.

(2) The order for the temporary stay is to contain the condition that the creditor pursuing compulsory enforcement is to be paid the current interest due to him or her and is to be compensated for lost value arising as a result of use through ongoing payments. This is not applicable insofar as, based on the amount of the debt and the value of and other charges on the real estate, it cannot be expected that the creditor will be satisfied by the proceeds of the auction.

(3) The proceedings are to be continued upon the application of the creditor if the conditions for the temporary stay cease to exist, if the prerequisites under subsection 2 are not

observed or the debtor agrees to the continuation. Prior to a decision by the court, the debtor is to be heard.

Section 31

(1) In the event of a temporary stay, the proceedings may only be continued upon the application of the creditor insofar as there are no other statutory provisions. If such an application is not submitted within six months, the proceedings are to be terminated.

(2) The time period under subsection (1) sentence 2 commences

- a) in a case under section 30, upon the stay of the proceedings,
- b) in a case under section 30a, up until the time when the stay was ordered,
- c) in a case under section 30f subsection (1), at the conclusion of the insolvency proceedings, and in a case under section 30f subsection (2), upon the withdrawal or rejection of the application for the opening of the insolvency proceedings,
- d) if the stay was ordered by the court hearing the case, upon the rescission of the order or upon some other conclusion of the stay.

(3) As a general rule, the court responsible for execution instructs the creditor about the commencement of the time period together with information about the legal consequences of expiry of the time period without success; the time period commences only after the instruction about the legal consequences of expiry of the time period without success has been served on the creditor.

Section 32

The order by which the proceedings are terminated or temporarily stayed is to be served on the debtor, the creditor, and, if the order was applied for by a third party, on such third party as well.

Section 33

Upon conclusion of the auction, if there are grounds for termination, for temporary stay of the proceedings, or for cancelling the date of the auction, a decision may only be taken if knockdown is refused.

Section 34

In the event of a termination of the proceedings, a request is to be made for the land registry to delete the note concerning the enforced auction.

III.

Scheduling the date for the auction

Section 35

The auction is conducted by the court responsible for execution.

Section 36

(1) As a general rule, the date of the auction may be scheduled only after the seizure of the real estate has occurred and after receipt of information from the land registry.

(2) As a general rule, the period between scheduling the date of the auction and the date may not exceed six months unless there are compelling reasons otherwise. If the proceedings were temporarily stayed, this time period, as a general rule, may not exceed two months; however, it must be at least one month.

(3) At the discretion of the court, the auction may be held at the location of the court or at another location within the judicial district.

Section 37

The notice scheduling the date of the auction must contain:

1. the identification of the real estate;
2. the time and place of the auction;
3. information that the auction is effected as part of compulsory enforcement;
4. the demand that rights, insofar as they were not evident from the land register at the time of entry of the note concerning the enforced auction, be registered at the latest at the auction prior to the call for the submission of bids and, if the creditor objects, that they be credibly demonstrated, failing which the rights will not be considered in establishing the lowest bid and upon the distribution of the proceeds of the auction would be ranked below the creditor's claim and the remaining rights;
5. the demand to those who have a right that is contrary to the auction to cause the termination or temporary stay of the proceedings prior to knockdown, failing which as to such right the proceeds of the auction would take the place of the auctioned object.

Section 38

(1) As a general rule, the notice scheduling the date of the auction must contain information as to the land register page and the size and market value of the real estate. If knockdown was refused at a previous auction based upon reasons set forth in section 74a subsection (1) or in section 85a subsection (1), these facts must, as a general rule, also be provided in the notice scheduling the date of the auction.

(2) The court may publicly announce valuation reports and appraisals in an electronic information and communications system intended for the court.

Section 39

(1) The notice scheduling the date of the auction must be publicly announced through a one-time listing in a publication intended for court announcements or in an electronic information and communications system intended for the court.

(2) If the real estate is low in value, the court may order that the listing or publication under subsection (1) is not made; in this case announcement must take place by posting the notice scheduling the date of the auction in the location for official announcements specified therefor in the municipality in which the real estate is located.

Section 40

(1) The notice scheduling the date of the auction is to be posted on the court public notice board. If the court has been appointed as the court responsible for execution under section 2 subsection (2), posting must, as a general rule, also be made at the other courts. If the date is publicly announced under section 39 subsection (1) by publication in an electronic information and communications system intended for the court, posting on the court public notice board is not required.

(2) The court is authorised to initiate other and repeated publications; in the exercise of this authorisation, the court is to take particular consideration of local practice.

Section 41

(1) The notice scheduling the date of the auction is to be served on the parties.

- (2) During the fourth week prior to the auction, the parties, as a general rule, must be informed of the applicant and the claims based upon which the auction is to take place.
- (3) Those persons who still must credibly demonstrate their registered right are also deemed to be parties.

Section 42

- (1) Every person is allowed to inspect the information from the land registry and the registrations that have been made.
- (2) The same applies to other documentation concerning the real estate submitted by a party, particularly appraisals.

Section 43

- (1) The date of the auction is to be cancelled and a new date determined if the notice scheduling the date of the auction was not announced six weeks prior to such date. If the proceedings were temporarily stayed, it is sufficient if the announcement of the notice scheduling the date of the auction is made two weeks prior to the auction.
- (2) The same applies if four weeks prior to the date of the auction an order based upon which the auction could take place was not served on the debtor and the notice scheduling the date of the auction was not served on all parties who were known to the court at the time the date of the auction was scheduled, unless the person in consideration of whom the deadline was not met has agreed to the proceeding.

IV.

Lowest bid. Auction conditions

Section 44

- (1) At the auction, only those bids are accepted that would cover the priority rights of the creditor's claim as well as the costs of the proceedings to be paid from the auction proceeds (lowest bid).
- (2) If the proceedings are being conducted based upon several claims of different rank, the higher-ranking claim may only be used for establishing the lowest bid if the order issued pertaining to such claim was served upon the debtor four weeks prior to the date of the auction.

Section 45

- (1) In establishing the lowest bid, a right is only to be taken into consideration to the extent it was evident from the land register at the time of the entry of the note concerning the enforced auction according to the contents of the land register, in all other cases, only if it was registered in good time and, if objected to by the creditor, credibly demonstrated.
- (2) As to periodic payments to be paid according to the contents of the land register, current amounts are not required to be registered nor past due amounts to be credibly demonstrated.
- (3) Claims under section 10 subsection (1) no. 2 are to be credibly demonstrated upon registration by way of a corresponding title, copies of resolutions including the attachments thereto, or in another suitable manner. These submissions must show the payment obligation, the nature and reference period of the claim and its maturity date.

Section 46

As to periodic payments that do not consist of money, the court is to establish a monetary amount, even when such has not been registered.

Section 47

Current amounts for regular periodic payments are to be covered during the time period ending two weeks after the date of the auction. Non-regular periodic payments are to be taken into consideration together with amounts that are to be paid prior to the expiry of this time period.

Section 48

Conditional rights are to be taken into consideration in the same way as unconditional rights; rights that are secured by the entry of an objection or a priority notice are to be taken into consideration in the same way as entered rights.

Section 49

- (1) The portion of the lowest bid that is designated to cover the costs as well as the claims set forth in section 10 nos. 1 to 3 and in section 12 nos. 1 and 2, likewise the amount by which the highest bid exceeds the lowest bid, are to be adjusted by the purchaser prior to the date of distribution of the proceeds (cash bid).
- (2) Interest accrues on the cash bid from the time of the knockdown.
- (3) The cash bid is to be paid on time into a bank account of the court cashier's office by way of a transfer so that the amount is credited to the court cashier's office prior to the date of distribution of the proceeds and there is proof thereof on that date.
- (4) The purchaser is relieved of his or her obligations by deposit if the deposit and the exclusion of withdrawal are evidenced at the hearing regarding the distribution of the proceeds.

Section 50

- (1) To the extent a non-existent mortgage, land charge or annuity land charge was taken into consideration in the determination of the lowest bid, the purchaser, in addition to the cash bid, is also to pay the amount of the principal considered. With regard to bearing interest, the interest rate, the time of payment, a notice of redemption and the place of payment, the provisions adopted as to the recognised right remain decisive.
- (2) The same applies:
 1. if the right is conditional and the condition precedent does not occur or the condition subsequent occurs;
 2. if the right still exists to a different plot of real estate and the right to the real estate sold by auction is extinguished under the specific provisions concerning the general mortgage.
- (3) If at the same time the purchaser is personally liable in circumstances described in subsection (2) no. 2, an increase in the amount payable is precluded to the extent the purchaser has not been enriched.

Section 51

- (1) If the right to be taken into consideration is not a mortgage, land charge, or annuity land charge, the provisions of section 50 apply accordingly. The purchaser is to pay the amount by which the value of the real estate increased rather than the principal three months after the notice of redemption and is to pay interest thereupon from the time of the knockdown.
- (2) As a general rule, the amount is to be determined by the court upon the establishment of the lowest bid.

Section 52

(1) A right remains effective insofar as it was taken into consideration at the time of the establishment of the lowest bid and is not to be covered by payment. In all other cases, the rights are extinguished.

(2) The right to payments on annuity land charges as defined in sections 912 to 917 of the Civil Code also remains effective when it was not taken into consideration in the determination of the lowest bid. Sentence 1 applies accordingly to

- a) the interest on heritable building rights, if under section 9 subsection (3) of the Heritable Building Rights Act (*Erbbaurechtsgesetz*) the continued effectiveness of the interest on heritable building rights has been agreed as part of the substance of the realty charge;
- b) easements and restricted personal easements that encumber the plot of real estate as a whole, if enforcement is against residential property with priority in accordance with section 10 subsection (1) no. 2 and there is no other right in priority class 4 ranked above it based upon which the auction may take place.

Section 53

(1) If, in the case of a mortgage that remains effective, the debtor at the same time is individually liable, the purchaser assumes the debt in the amount of the mortgage; the provisions in section 416 of the Civil Code apply accordingly with the proviso that the debtor is to be regarded as the seller within the meaning of these provisions.

(2) The same applies if, in the case of a land charge or an annuity land charge that remains effective, the debtor at the same time is individually liable, insofar as at the latest on the day of the auction prior to the call for the submission of bids, he or she has registered the claim against him, indicating its amount and basis, and, upon request of the court or a party, has credibly demonstrated it.

Section 54

(1) The notice of redemption of a mortgage, a land charge or an annuity land charge declared by the creditor to the owner or by the owner to the creditor is only effective vis-à-vis the purchaser when it occurred at the latest on the day of the auction prior to the call for the submission of bids and was registered at the court.

(2) The same applies to a circumstance not apparent from the land register as a result of which the claim may be asserted prior to that time.

Section 55

(1) The auction of the plot of real estate encompasses all objects as to which the seizure is still effective.

(2) The auction also encompasses all accessories that are in the possession of the debtor or a new owner when they belong to a third party unless such party has asserted his or her right in accordance with section 37 no. 5.

Section 56

The risk of accidental loss passes to the purchaser at the time of the knockdown as to the plot of real estate and at the conclusion of the auction as to the remaining objects. From the time of the knockdown, the purchaser is entitled to the usufructs and bears the charges. There is no warranty claim.

Section 57

If a lessee or usufructuary lessee has been permitted to use the plot of real estate, the provisions in sections 566, 566a, 566b subsection (1), 566c and 566d of the Civil Code apply accordingly in accordance with sections 57a and 57b.

Section 57a

The purchaser is entitled to terminate the rental or leasing relationship within the statutory notice period. Termination is not allowed if it does not occur at the first time that it is admissible.

Section 57b

(1) Insofar as, under sections 566b subsection (1), 566c and 566d of the Civil Code, the devolution of ownership is to be considered concerning the effectiveness of dispositions and legal transactions regarding rent or lease payments, instead of this the seizure of the plot of real property is decisive. If the order for the enforced auction is served on the lessee or usufructuary lessee, upon service the seizure is deemed to be known to the lessee or usufructuary lessee; service is effected upon application by the creditor on those persons designated by him or her. As a general rule, the order must include instructions on the significance of the seizure for the lessee or usufructuary lessee. Upon the application of the creditor, the court is to cause an investigation to be made to identify the lessees and usufructuary lessees of a plot of real estate; to this end it may direct a bailiff or another civil servant or request a communication from the competent local authority as to the lessees and usufructuary lessees known to it.

(2) Seizure for the purpose of the enforced auction is to have the same effect as seizure for the purpose of receivership if it has continued until the knockdown. If the lessee or usufructuary lessee has been served with the order prohibiting him or her from making payments to the debtor, this service is deemed to establish knowledge of the seizure by such lessee or usufructuary lessee.

(3) These provisions are not applicable to dispositions or legal transactions by the receiver.

Section 58

The costs of the court order by means of which the knockdown is accepted are borne by the purchaser.

Section 59

(1) Each party may request establishment of the lowest bid in derogation from the statutory provisions and the auction terms at the latest on the day of the auction prior to the call for the submission of bids. The application may be withdrawn at the latest at the time set forth in sentence 1. If the right of another party will be affected by the derogation, that party's agreement is required.

(2) To the extent that it has not been ascertained whether the right will be adversely affected by the derogation, the plot of real estate is to be offered for bids both with and without the requested derogation.

(3) If the continuing existence of a right is to be determined, which would be extinguished under section 52, it does not require the agreement of a party with an inferior rank.

Section 60

(repealed)

Section 61

(repealed)

Section 62

Prior to the date of the auction, the court may allow the parties to discuss the lowest bid and the auction terms and to this end may also set a specific court hearing date.

Section 63

(1) Several plots of real estate to be auctioned in the same proceeding are to be offered separately. Plots of real estate that are built over with one integrated structure may also be offered together.

(2) At the latest on the day of the auction prior to the call for the submission of bids, any party may request that, in addition to inviting separate bids for each plot of real estate, all plots may be offered together (aggregated offer). To the extent that some plots of real estate are encumbered by one and the same right, any party may also request that such plots of real estate be jointly offered (grouped offer). Upon application, the court may also order the aggregated offer of some of the plots of real estate (grouped offer) in other cases.

(3) If a highest bid is submitted in response to an invitation for a separate bid concerning one of the plots of real estate that is higher than the lowest bid for this plot of real estate, then as to the aggregated offer the lowest bid increases by the difference in the amounts.

Knockdown is granted based upon the aggregated offer only if the highest bid is higher than the total result of the separate bids.

(4) An invitation for a separate bid does not take place when the parties in attendance whose rights are not to be taken into consideration in the determination of the lowest bid have waived those rights. This waiver is to be declared at the latest prior to the call for the submission of bids.

Section 64

(1) If a number of plots of real estate encumbered with a general mortgage having priority above the creditor's claims are auctioned in the same proceedings, upon application the general mortgage is to be taken into consideration in the determination of the lowest bid for the separate plot of real estate only in the partial amount that corresponds to the relationship of the value of the real estate to the value of all of the plots of real estate; the value is calculated with a deduction of the charges that have priority above the general mortgage and continue to exist. Those entitled to submit an application are the creditor, the owner and every party who is of the same or of lower rank than the mortgage creditor.

(2) If an application as described in subsection (1) is submitted, up until the close of the proceedings at the auction, the mortgage creditor may request that only those rights higher in rank than his or her claim are to be taken into consideration in the determination of the lowest bid as to the plots of real estate; in such a case the plots of real estate are also to be offered with the requested derogation. If, subsequent to the offer of the real estate at auction, the mortgage creditor, regardless of the request by the court, does not state which offer is to be decisive for the knockdown, this takes place on the basis of the lowest bid determined in accordance subsection (1).

(3) These provisions apply accordingly when the plots of real estate are encumbered with one and the same land charge or annuity land charge.

Section 65

(1) The court may, upon application, order that a debt or a moveable object be excluded from the auction of the real estate and be separately auctioned. Upon application, another form of disposal may also be ordered, in particular a representative may be appointed for the

collection of a debt or the debt may be transferred to a party with his or her agreement instead of payment. The provisions in sections 817, 820, and 835 of the Code of Civil Procedure apply accordingly. The proceeds are to be deposited.

(2) A separate auction or other form of disposal is only admissible when the lowest bid has been achieved.

V. Auction

Section 66

(1) On the day of the auction, after the matter is called, the documents related to the plot of real estate, the creditors pursuing the proceedings, their claims, the time of the seizure, the value of the plot of real estate as established by the court and the registrations made are to be announced, and thereupon the lowest bid and the auction terms are to be established and the established terms read out after hearing those parties present, when necessary with the assistance of an accounting expert, with a description of the individual rights.

(2) Subsequent thereto, the court is to inform of the imminent exclusion of further registrations and then announce the call for the submission of bids.

Section 67

(1) A party whose rights would be adversely affected by the non-fulfilment of the bid may request the provision of security, but may do so only immediately after the submission of the bid. This request also applies to further bids by the same bidder.

(2) If the bidder is entitled to a mortgage, land charge or annuity land charge covered in whole or in part by the bid, he or she is only required to provide security upon request of the creditor. This provision does not apply to bids by the debtor or a new owner.

(3) No security may be requested for a bid by the federal government, the Deutsche Bundesbank, the Deutsche Genossenschaftsbank, the Deutsche Girozentral (Deutsche Kommunalbank) or a *Land*.

Section 68

(1) The security is to be provided in the amount of one-tenth of the market value stated in the notice scheduling the date of the auction, in all other cases, the established market value. If the security under sentence 1 exceeds the cash bid, the surplus is to be released. If the security is provided by way of a transfer to the account of the court cashier's office, the court orders disbursement of the surplus.

(2) A party whose right remains effective under section 52 may additionally request payment of security up to an amount to be adjusted by payment that would cover claims that have a higher rank than his or her right.

(3) If the debtor or a new owner of the plot of real estate bids, the creditor may additionally request provision of security up to an amount to be adjusted by payment that would cover his or her claim.

(4) The increased security under subsections (2) and (3) is to be provided at the latest by the knockdown.

Section 69

(1) Provision of security by cash payment is excluded.

(2) Cheques guaranteed by the Bundesbank and crossed cheques that were issued no earlier than three business days prior to the date of the auction are suitable for provision of

the security. This only applies when they are issued by a credit institution entitled to perform banking services encompassed by the scope of this statute or by the Bundesbank and are payable within Germany. Entitled within the meaning of this provision are credit institutions that are set forth in the list of authorised credit institutions under Article 3 subsection (7) and Article 10 subsection (2) of Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ EC L 322, p. 30).

(3) A suretyship that is unlimited in duration, unconditional and absolute from a credit institution within the meaning of subsection (2) is admissible as security if the obligation from the suretyship is to be fulfilled within Germany. This does not apply to bids by the debtor or a new owner.

(4) Provision of security may be effected by a transfer to an account of the court cashier's office if the amount is credited to the court cashier's office prior to the date of the auction and evidence thereof is provided at the auction.

Section 70

(1) The court is to reach an immediate decision concerning the provision of security.

(2) If the court declares that security is required, it is to be provided immediately. Provision of security by way of a transfer to an account of the court cashier's office must take place prior to the date of the auction. If such provision has not been made, the bid is to be refused.

(3) If the bid is allowed without the provision of security and the party that requested the security did not immediately lodge an objection, the request is to be deemed to have been withdrawn.

Section 71

(1) An ineffective bid is to be refused.

(2) If the effectiveness of a bid is dependent upon the power of representation of the person who submitted the bid for the bidder or upon the approval of another or of a public agency, it is refused unless the power of representation or the approval is evident to the court or is immediately proven by a publicly certified document.

Section 72

(1) A bid expires if a higher bid is allowed and a party does not immediately object to the allowance of such bid. A higher bid is deemed allowed when it is not immediately refused.

(2) A bid also expires when it is refused and the bidder or a party does not immediately object to such refusal.

(3) The same applies when the proceedings are temporarily stayed or the date of the auction is cancelled.

(4) A bid does not expire if security under section 68 subsections (2) and (3) as to an allowed higher bid has not been provided by the time of the decision on the knockdown.

Section 73

(1) There must be a period of thirty minutes between the call for the submission of bids and the time at which the auction concerning all plots of real estate to be auctioned is closed. The auction must be continued for as long as necessary until, despite the court's call, no further bid is submitted.

(2) The court is to pronounce the final bid and the close of the auction. The pronouncement of the final bid is to take place by way of calling three times.

Section 74

Upon conclusion of the auction, the parties present are to be heard concerning the knockdown.

Section 74a

- (1) If the highest bid submitted including the net present value of the rights continuing in effect under the auction terms is lower than seven-tenths of the value of the real estate, an entitled person whose claim is not covered in whole or in part by the highest bid but foreseeably would be by a bid in the amount stated may apply for knockdown to be refused. The application is to be refused when the creditor pursuing compulsory enforcement objects and credibly demonstrates that he or she would be subject to a disproportionate disadvantage from the refusal of knockdown.
- (2) The application for knockdown to be refused may only be submitted until the conclusion of the proceedings concerning knockdown; the same applies to the declaration of objection.
- (3) If knockdown is refused under subsection (1), a new auction date is to be scheduled *ex officio*. As a general rule, the period between the two auction dates must be at least three months unless the particular circumstances specific case require otherwise, but may not exceed six months.
- (4) At the subsequent auction, knockdown may not be refused for reasons based upon subsection (1) or section 85a subsection (1).
- (5) The value of the real estate (current market value) is to be established by the court responsible for execution, when necessary, after hearing experts. The value of movable objects that are encompassed by the auction is to be estimated taking into account the overall circumstances. The order concerning the establishment of the value of the real estate is appealable by an immediate complaint. Knockdown or refusal of knockdown cannot be appealed based upon the grounds that the value of the real estate was improperly established.

Section 74b

If the highest bid was submitted by a person entitled to satisfaction from the real estate, section 74a is not applicable if the bid including the net present value of the rights continuing in effect under the auction terms together with the amount of the shortfall for the highest bidder in the distribution of the proceeds is at least seven-tenths of the value of the real estate and the rank of this amount is directly below the last amount that is covered by the bid.

Section 75

The proceedings are stayed if the debtor presents evidence on the date of the auction of payment or transfer from a bank or savings bank or a public document that shows that the debtor or a third party who is entitled to satisfy the creditor has paid the amount necessary for satisfaction and to cover the costs to the court cashier's office.

Section 76

- (1) If at the auction concerning several plots of real estate, such a high amount is bid as to one or several plots that the creditor's claim is covered, the proceedings in regard to the remaining plots of real estate are to be temporarily stayed; the stay does not occur if it is contrary to the legitimate interests of the creditor.
- (2) If the temporary stay occurs, the creditor may request continuation of the proceedings if he or she has a legitimate interest therein, particularly if he or she has not been satisfied at

the auction. If the creditor does not apply for the continuation prior to the expiry of three months after the date of the auction, the application for the auction is deemed to have been withdrawn.

Section 77

(1) If no bid is submitted or if all bids have expired, the proceedings are temporarily stayed.
(2) If the auction is also unsuccessful on the second date, the proceedings are to be terminated. If the prerequisites for an order for receivership of the real estate are fulfilled, upon the application of the creditor the court may order that the proceedings continue as receivership. In such a case, the effects of the seizure that took place for the enforced auction continue; the provision in section 155 subsection (1) concerning the costs of the enforced auction, however, are not applicable.

Section 78

Actions during the auction that are relevant to the decision on the knockdown or to the right of a party are to be set forth in the record; if there is a dispute as to whether or to which bid knockdown is to be granted, the factual circumstances together with the applications made are to be set forth in the record.

VI.

Decision on knockdown

Section 79

In its decision-making concerning knockdown, the court is not bound by any earlier decision it has taken.

Section 80

Actions during the auction that are not apparent from the record are not considered in the decision on knockdown.

Section 81

(1) Knockdown is granted to the person who submits the highest bid.
(2) If the person who submits the highest bid has ceded the right deriving from the highest bid to another person and that person has accepted the obligation deriving from the highest bid, then knockdown is not granted to the person who submitted the highest bid, but rather, to the other person if the declarations are submitted at the auction or are subsequently proven through publicly certified documents.
(3) If the person who submitted the highest bid declares at the auction or subsequently in a publicly certified document that he or she submitted bids for another person, knockdown is to be granted in favour of such other person if the power of representation of the person who submitted the highest bid or the agreement of the other person is either evident to the court or has been proven by way of a publicly certified document.
(4) If knockdown has been granted, the person who submitted the highest bid and the purchaser are jointly liable.

Section 82

In the order by way of which knockdown has been granted, the plot of real estate, the purchaser, the bid, and the auction terms are to be set forth; also, in cases under section 69 subsection (3), the surety together with the amount of his or her debt and, in cases under section 81 subsection (4) the highest bidder, are to be declared to have joint liability.

Section 83

Knockdown is to be refused:

1. if the provision in section 43 subsection (2) or one of the provisions concerning the determination of the lowest bid or the auction terms is violated;
2. if at the auction of several plots of real estate an invitation for separate offers or a combined offer is not made, contrary to the provisions in section 63 subsections (1), (2) sentence 1, or (4);
3. if in cases under section 64 subsection (2) sentence 1 and subsection (3) the mortgage, land charge or annuity land charge or the right of a party that is of the same or inferior rank which is higher in priority than the creditor are not covered by the total amount of the separate offers;
4. if the registration or demonstration of credibility of a right that occurred subsequent to the call for the submission of bids is refused without consideration of the provision in section 66 subsection (2);
5. if the enforced auction or the continuation of the proceedings is contrary to the right of a party;
6. if the enforced auction or the continuation of the proceedings is inadmissible for any other reason;
7. if one of the provisions in section 43 subsection (1) or section 73 subsection (1) is violated;
8. if the requested provision of security under section 68 subsections (2) and (3) is not made by the time of the decision on knockdown.

Section 84

(1) The grounds for refusal set forth in section 83 nos. 1 to 5 do not preclude the granting of knockdown if the right of the party is not adversely affected by knockdown or if the party agrees to the proceedings.

(2) The agreement is to be evidenced by a publicly certified document.

Section 85

(1) Knockdown is to be refused if, prior to the close of the proceedings, a party whose right would be adversely affected by knockdown and who is not among those entitled persons as set forth in section 74a subsection (1) applies for the scheduling of a new auction date and concurrently undertakes to reimburse the damage arising from the refusal of knockdown, including the provision of security at the request of another party. The provisions in section 67 subsection (3) and section 69 apply accordingly. The amount of the security to be provided is to be the portion of the highest previous bid to be adjusted by the date of the hearing regarding the distribution of the proceeds.

(2) The new notice scheduling the date of the auction is also to be served on the highest bidder.

(3) At the next auction, the previous highest bid with interest from the portion of the highest bid to be adjusted by payment with the addition of those extra costs that are to be deducted from the proceeds of the auction is deemed to be a bid submitted by the party.

(4) In the continued proceeding, the provision in subsection (1) is not applicable.

Section 85a

(1) Knockdown is also to be refused if the highest bid submitted including the net present value of the rights remaining in effect under the auction terms is less than half of the value of the real estate.

(2) Section 74a subsections (3) and (5) apply accordingly. As a general rule, at the new auction, knockdown may not be rejected based on grounds in subsection (1) or in section 74a subsection (1).

(3) If the highest bid is submitted by one entitled to satisfaction from the real estate, subsection (1) is not applicable if the bid, including the net present value of the rights remaining in effect under the auction terms together with that amount by which the highest bidder would fall short in the distribution of the proceeds, is at least half of the value of the real estate.

Section 86

The final and binding refusal of knockdown effects a temporary stay when the continuation of the proceedings is admissible and in all other cases it effects termination of the proceedings.

Section 87

(1) The order by way of which the knockdown is granted or refused is to be pronounced at the auction or at a hearing, the date of which is to be immediately scheduled.

(2) The date for the pronouncement of the decision is not to be scheduled later than one week thereafter. The scheduling of the date is to be pronounced, and announced by posting on the court public notice board.

(3) If facts or evidence are subsequently presented, as a general rule, the parties present at the pronouncement of the decision are to be heard regarding this.

Section 88

The order by way of which knockdown is granted is to be served on those parties who did not appear at the auctions or at the pronouncement, the purchaser and, in cases under section 69 subsection (3), a surety declared to be jointly liable, and in cases under section 81 subsection (4) the highest bidder. Those persons who still must credibly demonstrate a registered right are also deemed to be parties.

Section 89

The knockdown is valid upon pronouncement.

Section 90

(1) Through the knockdown, the purchaser becomes the owner of the plot of real estate unless the order has been repealed with final and binding effect during the appellate proceedings.

(2) Concurrently with the plot of real estate, he or she also purchases those objects that were encompassed by the auction.

Section 91

(1) The rights that are not to remain effective under the auction terms are extinguished by the knockdown in accordance with the prerequisite set forth in section 90 subsection (1).

(2) A right in the plot of real estate remains, however, if this has been agreed between the entitled person and the purchaser and the declarations are either made at the hearing regarding the distribution of the proceeds or evidenced by a publicly certified document prior to the request to the land registry for amendment of the land register.

(3) In cases under subsection (2), the portion of the highest bid to be adjusted by payment is to be reduced by the amount that otherwise would be due to the entitled person. In all other cases, the agreement has the same effect as satisfaction of the entitled person from the plot of real estate.

(4) The extinction of a right owned by a person who could request the extinction of an existing mortgage, land charge or annuity land charge under section 1179a of the Civil Code at the time of such deletion does not result in the extinction of this claim. The claim is extinguished when the entitled person is satisfied from the plot of real estate.

Section 92

(1) If by the knockdown a right is extinguished that is not directed at the payment of principal, the claim for reimbursement of the value from the proceeds of the auction replaces such right.

(2) Reimbursement for a usufruct, for a restricted personal easement, or for a realty charge of unlimited duration is to be made by the payment of an annuity in money that corresponds to the annual value of the right. The amount is to be paid for three months in advance. The claim for a payment that has become due also remains effective as to the entitled person even if the right to the periodic payments on annuity land charges is extinguished prior to the expiry of the three months.

(3) As to redeemable rights, the amount of the reimbursement payment is determined by the redemption sum.

Section 93

(1) Compulsory enforcement to vacate and surrender against the possessor of the plot of real estate or an object that was also auctioned takes place based upon the order through which the knockdown is granted. As a rule, compulsory enforcement may not take place when the possessor is in possession based upon a right that is not extinguished by the knockdown. If, nevertheless, the compulsory enforcement takes place, the possessor may object in accordance with the requirements of section 771 of the Code of Civil Procedure.

(2) The purchaser is not obliged to reimburse outlays made prior to knockdown.

Section 94

(1) Upon the application of a party who expects satisfaction from the cash bid, the plot of real estate is to be placed under court administration for the account of the purchaser for as long as payment or deposit has not occurred. The application may be submitted at the auction.

(2) The provisions concerning receivership apply accordingly to the appointment of an administrator as well as to his or her rights and duties.

Section 94a

(1) Upon the application of the municipality in which the plot of real estate is located, that plot is to be placed under court administration for the account of the purchaser as long as

1. payment or deposit has not occurred,
2. evidence has not been provided to the court that an out-of-court agreement has been reached on the distribution of the proceeds in accordance with section 143 or
3. evidence has not been provided to the court of out-of-court satisfaction in accordance with section 144.

(2) The application may be made from the date of the order of the enforced auction and must be made no later than on the date of distribution. The municipality must confirm upon application that the property to be administered

1. is a danger to public security or order,
2. has structural defects or deficiencies,
3. does not comply with the provisions applicable to handling, use and management or
4. is not being used appropriately.

If an application exists at the time the date of the auction is scheduled, that is to be indicated in the notice scheduling the auction.

(3) Court administration may be ordered from the time of the granting of knockdown. It is to be terminated when the distribution plan has been carried out by assignment and

1. receivership has been ordered on the purchaser or
2. the purchaser has provided evidence to the court of the complete satisfaction of the entitled persons from the assignment.

(4) Section 94 subsection (2) is applicable. The administrator may demand payment of the remuneration from the municipality that made the application if the purchaser has not paid the determined remuneration after being called upon to do so by the administrator. If the municipality pays the remuneration, it may demand reimbursement from the purchaser.

VII.

Complaints

Section 95

An immediate complaint may be filed against a decision that was made prior to the decision-making concerning the knockdown only to the extent that the decision affects the order for, termination, temporary stay or continuation of the proceedings.

Section 96

The provisions of the Code of Civil Procedure are only applicable to the complaint against the decision concerning knockdown unless if sections 97 to 104 do not provide otherwise.

Section 97

(1) When knockdown has been granted, a complaint is available to each party, the purchaser, third parties declared to have payment obligations, and in the case of a refusal, the creditor, in both cases also a bidder whose bid is not extinguished, as well as those taking the place of the bidder under section 81.

(2) In a case under section 9 no. 2, it is sufficient if the registration and the demonstration of credibility of the right are submitted to the court hearing the complaint.

Section 98

The time period for the complaint against an order by the court responsible for execution in which the knockdown was refused commences with the pronouncement of the order. The same applies in the case of granting knockdown for the parties who were present at the auction or at the pronouncement.

Section 99

- (1) If the court hearing the complaint deems a counterstatement necessary, it is to determine who is to be included as a respondent to the appellant.
- (2) If there is more than one complaint, they are to be joined.

Section 100

- (1) The complaint may only be based upon a violation of one of the provisions of sections 81 and 83 to 85a or upon knockdown having been granted under conditions differing from those upon which the auction was based.
- (2) Reasons that only affect the rights of another person cannot be used to support either the complaint or an application for its refusal.
- (3) The grounds for rejection set forth in section 83 nos. 6 and 7 are to be considered *ex officio* by the court hearing the complaint..

Section 101

- (1) If the complaint is deemed justified, the court hearing the complaint, upon quashing the challenged court order, is to decide on the matter as such.
- (2) If an order through which knockdown was granted is repealed, but upon a complaint on points of law is deemed justified, the complaint filed against the granting of knockdown is to be dismissed upon the repeal of the order of the court hearing the complaint.

Section 102

If the court hearing the complaint repealed the order through which the knockdown was granted subsequent to the distribution of the proceeds of the auction, a complaint on points of law may also be filed by those who have received proceeds if the court hearing the complaint so allows.

Section 103

If the challenged order has been repealed or modified, the decision of the court hearing the complaint is to be served on all parties and those bidders to whom knockdown was denied or granted, as well as in cases under section 69 subsection (3) on a surety declared to be jointly liable and in cases under section 81 subsections (2) and (3) on the highest bidder. If the complaint is dismissed, the order is only served on the applicant and the included respondent.

Section 104

The order through which the court hearing the complaint grants knockdown first becomes effective upon service on the purchaser.

VIII.

Distribution of proceeds

Section 105

- (1) Subsequent to the granting of knockdown, the court is to schedule a date for the distribution of the proceeds of the auction.
- (2) The notice scheduling the date of the distribution is to be served on the parties and the purchaser as well as in cases under section 69 subsection (3) on a surety declared to be jointly liable and in cases under section 81 subsections (2) and (3) on the highest bidder. Those persons who still must credibly demonstrate a registered right are also to be deemed parties.

(3) As a general rule, the notice scheduling the date of the distribution is to be posted on the court public notice board.

(4) If the notice scheduling the date of the distribution is not served two weeks prior to such date on the purchaser and in cases under section 69 subsection (3) also on a surety declared to be jointly liable and in cases under section 81 subsections (2) and (3) also on the highest bidder, the date is to be cancelled and rescheduled to the extent the proceedings were not approved.

Section 106

In preparation of the distribution proceeding, in the notice scheduling the date of the distribution, the court may require the parties to submit an account of their claims within two weeks. In such case, subsequent to the expiry of the time period, the court is to prepare a distribution plan and, at least three days prior to the date of distribution, to place it in the court registry for review by the parties.

Section 107

(1) At the hearing regarding the distribution of the proceeds, the amount of the funds to be distributed is to be established. Also included in the funds to be distributed are the proceeds from those objects that were separately auctioned or otherwise disposed of in cases under section 65.

(2) The payments to be made by the purchaser at the hearing are to be made to the court. Section 49 subsection (3) applies accordingly.

(3) An amount of money that has been paid to the court cashier's office as security for the bid by the purchaser is set off against the payment under subsection (2) sentence 1.

Section 108

(repealed)

Section 109

(1) The costs of the proceedings are to be deducted from the proceeds of the auction in advance with the exception of the costs arising from the court order commencing the proceedings, the joinder of a creditor, the knockdown or subsequent hearings concerning the distribution.

(2) The surplus is to be distributed among those rights that are to be covered by payment.

Section 110

Rights that were not registered in good time or credibly demonstrated despite the specific demand in section 37 no. 4 are ranked lower than the other rights in the distribution.

Section 111

A claim with a fixed maturity date is deemed due. If the claim is not interest-bearing, the entitled person is to be paid only the amount that equals the amount of the claim including statutory interest for the time period between the payment and the due date; to the extent the due date is unknown, the claim is deemed to be subject to a condition precedent.

Section 112

(1) If at the auction of several plots of real estate, knockdown is granted based upon an aggregated offer and if distribution of the proceeds among the individual plots of real estate is necessary, initially that amount is to be deducted from the proceeds required to cover costs as well as to satisfy the rights taken into consideration in establishing the lowest bid and to be covered by payment as to which the undivided plots of real estate are liable.

(2) The surplus is distributed among the individual plots of real estate in accordance with the relationship of the values of the plots of real estate. The amount of the rights that are not extinguished under section 91 is added to the surplus amount. The amount associated with the rights that remain effective concerning a plot of real estate is to be set off against the portion of the proceeds attributable to that plot of real estate. If there is such a right in several of the auctioned plots of real estate, as to each only that amount that is proportionate to the value of the plots of real estate is to be set off.

(3) If the portion of the proceeds corresponding to an individual plot of real estate under subsection (2) is insufficient to satisfy those claims to be adjusted by payment in accordance with the lowest bid or is covered by the highest bid reached through an invitation for a separate offer for the plot of real estate, the portion is increased by such shortfall.

Section 113

(1) At the hearing regarding the distribution of the proceeds, after hearing those parties present, the court draws up the distribution plan with the assistance of an accounting expert if necessary.

(2) The plan is to also indicate the rights not extinguished under section 91.

Section 114

(1) The distribution plan is to include claims to the extent that their amount or highest amount was apparent from the land register at the time of the entry of the note concerning the enforced auction, based upon the contents of the register; in all other cases, they are only to be included when they are registered at the latest at the auction. The creditor's claims are deemed to have been registered insofar as they arise from the application for the compulsory auction.

(2) Registration is not required for current amounts for periodic payments that are to be made based upon the contents of the land register.

Section 114a

If knockdown is granted to a bid from a person entitled to satisfaction from the plot of real estate, which including the net present value of the rights remaining in effect in accordance with the auction terms is less than seven-tenths of the value of the real estate, the purchaser is also deemed to be satisfied from the real estate to the extent that his or her claim is not covered by the highest bid submitted but would be covered by a bid in an amount reaching the seven-tenths limit. In this context, rights higher or equal in rank to the claim of the purchaser that expire are not to be taken into consideration.

Section 115

(1) There are to be immediate negotiations concerning the distribution plan. Sections 876 to 882 of the Code of Civil Procedure apply accordingly to the negotiations, the handling of objections filed, and the implementation of the plan.

(2) If a claim registered prior to the hearing is not included in the plan in accordance with the application, the registration is deemed to be an objection to the plan.

(3) The objection of the debtor to an enforceable claim is handled in accordance with sections 767, 769 and 770 of the Code of Civil Procedure.

(4) To the extent the debtor may avoid the satisfaction of such a claim by provision of a security or deposit, implementation of the plan does not occur if such security or deposit has been provided.

Section 116

As a general rule, implementation of the distribution plan is to be stayed until the knockdown is final and binding if the purchaser, or in cases under section 69 subsection (3) a surety declared to be jointly liable, or in cases under section 81 subsections (2) and (3) the highest bidder, applies for the stay.

Section 117

(1) To the extent the proceeds of the auction are available as money, the distribution plan is implemented by payment to the entitled persons. The payment is to be made on a non-cash basis.

(2) Payment to an entitled person who is not present at the hearing is to be ordered *ex officio*. The form of the pay-out is determined in accordance with the *Land* law. If payment cannot be made, the amount intended for the entitled person is to be deposited.

(3) In the event of the deposit of the proceeds, instead of payment, instructions concerning the deposited amount may be issued.

Section 118

(1) To the extent the cash bid is not adjusted, the distribution plan is to be implemented so that the claim against the purchaser is transferred to the persons entitled and in cases under section 69 subsection (3) the claim against a surety declared to be jointly liable is transferred concurrently to the persons entitled; transfer and concurrent transfer take place by court order.

(2) The transfer has the same effect as satisfaction from the real estate. This effect, however, does not arise in cases under subsection (1) if, prior to the expiry of three months, the entitled person declares his or her waiver of the rights from the transfer to the court or applies for an enforced auction. If the application for an enforced auction is withdrawn or the proceedings are terminated under section 31 subsection (2), it is deemed not to have been made. In the case of waiver, as a general rule, the court is to inform the purchaser and those persons to whom the claim is transferred as a result of the waiver of such declaration.

Section 119

If an amount is allocated to a conditional claim, the distribution plan is to establish the way in which the amount would otherwise be distributed if the claim ceased to exist.

Section 120

(1) If the claim is subject to a condition precedent, the amount is to be deposited for the entitled persons. To the extent the amount is not paid, the claim against the purchaser is transferred to the entitled persons. The deposit as well as the transfer takes place for each person subject to the relevant condition.

(2) During the interim period, the provisions in sections 1077 to 1079 of the Civil Code apply to investing the deposited money, termination and collection of the transferred claim, and investment of the collected money; the form of investment is to be determined by the person due to receive the amount if the condition does not occur.

Section 121

(1) In cases under section 92 subsection (2) as to the reimbursement claim, an amount is to be included in the distribution plan that is equal to the sum of all future payments, however, it is not to exceed twenty-five times the amount of an annual payment; at the same time, it is to be determined that the individual payments are to be taken from the interest and the amount itself on the due date.

(2) The provisions in sections 119 and 120 apply accordingly; the form of investment of the money is to be determined by the first entitled person.

Section 122

(1) If several plots of real estate that are liable for the claim of a party are auctioned in the same proceeding, only an amount to be determined in proportion to the proceeds is to be included in the distribution plan for each individual plot of real estate, notwithstanding the provision in section 1132 subsection (1) sentence 2 of the Civil Code. The proceeds are to be calculated with a deduction for the amount of the claims that have priority above the claim of the party.

(2) If payment of an amount allocated to the claim of a party is not made, the claim is to be included in the plan as to each plot of real estate in such amount.

Section 123

(1) To the extent the amount allocated to a claim for which another plot of real estate is also liable is not paid, the way in which the amount is to be otherwise distributed if the right to satisfaction from the allocated amount expires in accordance with the separate provisions concerning the general mortgage is to be established in the distribution plan.

(2) The allocation is to be implemented so that the debt is transferred against the purchaser subject to a corresponding condition.

Section 124

(1) In the event there is an objection to the distribution plan, the plan is to establish the way in which the disputed amount is to be allocated if the objection is held to be well-founded.

(2) The provisions in section 120 apply accordingly; the form of investment is to be determined by the person asserting the claim.

(3) The same applies to the extent that implementation of the plan does not occur in accordance with section 115 subsection (4).

Section 125

(1) If the purchaser, in addition to the portion of the highest bid to be adjusted by payment, must pay a further amount in accordance with sections 50 and 51, the recipient of this payment is to be established in the distribution plan. The allocation is to be implemented by a transfer of the claim against the purchaser.

(2) If it is not known or if there is a dispute as to whether a further amount is to be paid, allocation and transfer occur subject to a corresponding condition. Sections 878 to 882 of the Code of Civil Procedure are not applicable.

(3) The transfer does not effect satisfaction from the real estate.

Section 126

(1) If the person entitled to an allocated amount is unknown, especially if the certificate concerning a mortgage, land charge or annuity land charge has not been presented, the distribution plan is to establish the way in which the amount is to be distributed if the entitled person is not determined.

(2) The amount is to be deposited for the unknown entitled person. To the extent the amount is not paid, the claim against the purchaser is to be transferred to the entitled person.

Section 127

(1) If the certificate is presented concerning a mortgage, land charge or annuity land charge extinguished as a result of the auction, the court is to render it unusable. If the right is only

partially extinguished, a corresponding notation is to be made on the certificate. If the certificate is not presented, the court may request it from the entitled person.

(2) In the case of presentation of an enforceable title regarding a claim as to which an amount will be allocated, the court is to make a notation on the title concerning the extent to which the amount is covered by payment, deposit or transfer.

(3) The wording of the notations is to be set forth in the record.

Section 128

(1) Insofar as the debt regarding a claim is transferred to the purchaser, a security mortgage on the plot of real estate is to be entered for the claim with the same rank as that of the claim. If the right from which the claim arose was encumbered by the right of a third party based upon the contents of the land register, this right is also to be entered as a right in the debt.

(2) Insofar as the debt against the purchaser remains undistributed, a security mortgage is to be entered for the person who was the owner of the real estate at the time of the knockdown.

(3) The mortgage comes into existence upon entry. If the mortgage and ownership are held by one person, it cannot be asserted to the detriment of a right that has remained effective or of a security mortgage entered in accordance with subsections (1) and (2).

(4) If the real estate is again auctioned publicly, the amount necessary to cover the mortgage is to be taken into account as a portion of the cash bid.

Section 129

The security mortgage for the claims designated in section 10 nos. 1 to 3, for the claims for periodic payments designated in section 10 no. 4, and for the costs designated in section 10 subsection (2) cannot be asserted to the detriment of rights that remain in existence and the remaining security mortgages entered in accordance with section 128 subsections (1) and (2) unless prior to the expiry of six months after the entry the person entitled to the mortgage applies for the enforced auction of the real estate. If the application for the enforced auction is withdrawn or the proceedings terminated in accordance with section 31 subsection (2), it is deemed to have not been submitted.

Section 130

(1) If the distribution plan has been implemented and the knockdown is final and binding, the land registry is to be requested to enter the purchaser as owner, to delete the note concerning the enforced auction and the rights extinguished by the knockdown, and to cause the entry of the security mortgage for the debt against the purchaser. Upon entry of the mortgages, it is to be made apparent in the land register that it has taken place based upon enforced auction proceedings.

(2) If it arises that a right taken into consideration in establishing the lowest bid did not come into existence or that it is extinguished, the request must also include the deletion of such right.

(3) If the purchaser, before he or she was registered as the owner, approved the entry of a right in the auctioned plot of real estate, the entry may not occur prior to the completion of the request described in subsection (1).

Section 130a

(1) To the extent the effects of a priority notice existed under section 1179a of the Civil Code as to the creditor of an extinguished right vis-à-vis a mortgage, land charge or annuity land

charge that remains in existence, such effects cease to exist upon the implementation of the request under section 130.

(2) If as to such a right the claim for deletion under section 1179a of the Civil Code vis-à-vis a right that remains in existence is not extinguished under section 91 subsection (4) sentence 2, the request under section 130 for an application to be submitted by the person entitled to a claim at the latest at the hearing regarding the distribution of the proceeds must, however, also include that a priority notice to secure the claim for deletion arising from the extinguished mortgage, land charge or annuity land charge in his or her favour as to the right that remains in existence is to be entered. The priority notice secures the claim for deletion from the same point in time at which the effects of section 1179a subsection (1) sentence 3 of the Civil Code commenced. Whoever is adversely affected by the entry of the priority notice may request agreement for deletion from the entitled person if, at the time of the extinction of his or her right, the entitled person was not entitled to a claim for deletion of the right remaining in existence or even upon realisation of this claim would not obtain additional satisfaction; the costs of deletion of the priority notice and the declarations necessary therefor are to be borne by the person in whose favour the priority notice was entered.

Section 131

In cases under section 130 subsection (1) for the deletion of a mortgage, land charge or annuity land charge and in cases under section 128 for the entry of the priority of a security mortgage, presentation of the certificate issued in regard to the right is not required. The same applies to the entry of a priority notice under section 130a subsection (2) sentence 1.

Section 132

(1) Following the implementation of the distribution plan, the debt against the purchaser, in cases under section 69 subsection (3) also against a surety declared to be jointly liable and in cases under section 81 subsection (4) also against the person who submitted the highest bid declared to be jointly liable, and the claim arising from the security mortgage against the purchaser and every subsequent owner are enforceable. This provision is not applicable insofar as the purchaser is required to pay an additional amount under sections 50 and 51.

(2) Compulsory enforcement takes place based upon an enforceable copy of the court order by way of which knockdown is granted. The entitled person and the amount of the debt are to be provided for in the court certificate of enforceability; service of a document concerning the transfer of the debt is not required.

Section 133

Compulsory enforcement as to the plot of real estate is admissible against the purchaser without service of the enforceable title or the court certificate of enforceability issued under section 132; it may take place even if the purchaser was not yet entered as owner. Presentation of the certificate designated in section 17 subsection (2) is not required as long as a request for entry has not been made to the land registry.

Section 134

(repealed)

Section 135

If the person entitled to an allocated amount is unknown, the court responsible for execution is to appoint a representative to determine the person entitled. The provisions in section 7 subsection (2) apply accordingly. The expenses and fees incurred by the representative are to be paid for from the allocated amount in advance.

Section 136

If the evidence of the person entitled is dependent upon the submission of the certificate concerning a mortgage, land charge or annuity land charge, such certificate may be declared invalid by way of a public notice proceeding even if the right has previously been deleted.

Section 137

(1) If the person entitled is subsequently determined, the distribution plan is to be implemented further.

(2) If there is an objection to the claim, the person who lodged the objection is to be notified of the determination of the person entitled. The time period set forth in section 878 of the Code of Civil Procedure for filing a court action commences upon service of the notification.

Section 138

(1) If the person entitled has not been determined prior to the expiry of three months from the hearing regarding the distribution of the proceeds, upon application the court is to authorise the party who was allocated an amount, in the alternative to apply for a public notice proceeding for the purpose of excluding the unknown entitled person to satisfaction from the allocated amount.

(2) If following the issuance of the authorisation, the person entitled is determined, the court is to notify the authorised persons hereof. The authorisation expires upon the notification.

Section 139

(1) In the event of subsequent determination of the person entitled the court may schedule a hearing for further implementation of the distribution plan. The notice scheduling the date of the hearing is to be served on the person entitled and his or her representative, the party to whom the amount was alternatively allocated and the person who was the owner of the real estate at the time of the knockdown.

(2) If there is an objection to the claim, service of the notice scheduling the date of the hearing is also to be served on the person who lodged such objection. The deadline set forth in section 878 of the Code of Civil Procedure for filing a court action commences with the hearing.

Section 140

(1) The court responsible for execution has jurisdiction over the public notice proceeding.

(2) As a basis for the application, the applicant must indicate the legal successor of the last person determined to be the person entitled known to him or her.

(3) In the public notice, the unknown entitled person is to be requested to register his or her right within the public notice time period, the failure of which will result in his or her exclusion from satisfaction from the allocated amount.

(4) The public notice is to be served on the last person determined to be the person entitled, the legal successor indicated and the representative of the unknown entitled person.

(5) A registration that occurred during the enforcement proceedings is also to be effective for the public notice proceedings.

(6) The applicant may request reimbursement of the costs of the proceedings from the allocated amount.

Section 141

Following the issuance of the exclusion order, the court is to schedule a hearing date for further implementation of the distribution plan. The notice scheduling the date of the hearing

is to be served on the applicant and those persons who have rights reserved in the judgment, the representative of the unknown entitled person and the person who was the owner of the real estate at the time of the knockdown.

Section 142

In cases under section 117 subsection (2) and sections 120, 121, 124 and 126, rights in the deposited amount are extinguished upon the expiry of thirty years if the authorised recipient has not registered with the depository prior to that time; the person who was the owner of the real estate at the time of the knockdown is entitled to collect. The thirty-year time period commences upon the deposit being made, in cases under sections 120 and 121 upon the fulfilment of the condition under which the deposit was made.

Section 143

The distribution of the proceeds of the auction by the court does not occur if evidence is provided to the court through public or publicly certified documents that the parties have reached agreement on the distribution of the proceeds.

Section 144

(1) If the purchaser or in cases under section 69 subsection (3) a surety declared to be jointly liable provides evidence to the court through public or publicly certified documents that he or she has provided satisfaction to those persons entitled whose claims were covered by the bid or that he or she has been accepted as the sole debtor by them, upon court order the documents together with the declaration of the purchaser or the surety are to be submitted to the court registry for review by the parties. The parties are to be notified of the submission and requested to assert objections without a particular form within two weeks.

(2) If objections without a particular form are not lodged within the two-week time period, the distribution proceedings are to be limited to the distribution of the proceeds from those objects that were separately auctioned in cases under section 65 or otherwise disposed of.

Section 145

The provisions in section 105 subsection (2) sentence 2 and sections 127 and 130 to 133 apply accordingly to cases under sections 143 and 144.

IX.

Lien on real property in foreign currency

Section 145a

The following special provisions apply to compulsory sales by auction of plots of real estate subject to a mortgage, land charge or annuity land charge in one of the currencies admitted under section 28 sentence 2 of the Land Register Code (*Grundbuchordnung*):

1. The notice scheduling the hearing date must contain the information that the real estate is encumbered by a mortgage, land charge or annuity land charge in one of the currencies admitted under section 28 sentence 2 of the Land Register Code and the designation of such currency.
2. During the enforced auction, prior to the call for the submission of bids, the value in euros of the mortgage, land charge or annuity land charge in the foreign currency admitted under section 28 sentence 2 of the Land Register Code is to be established and announced based on the officially determined latest exchange rate. This exchange rate remains decisive for the further proceedings.

3. The amount of the cash bid is to be established in euros. Bids are to be submitted in euros.
4. The distribution plan is to be prepared in euros.
5. If a creditor does not completely satisfy a mortgage, land charge or annuity land charge registered in a foreign currency admitted under section 28 sentence 2 of the Land Register Code, the remaining portion of his or her debt is to be determined in such foreign currency. The determination is to be decisive as to the liability of jointly encumbered objects, as to the obligation of the personal debtor, and as to the assertion of default in insolvency proceedings.

Title 3 **Receivership of real estate**

Section 146

- (1) The provisions concerning orders for enforced auctions apply accordingly to orders for receivership of real estate unless sections 147 to 151 provide otherwise.
- (2) The parties are to be notified of the order subsequent to receipt of the information from the land registry designated in section 19 subsection (2).

Section 147

- (1) Receivership also takes place based upon a claim arising from a registered right if the prerequisites in section 17 subsection (1) are not met but the debtor has proprietary possession of the real estate.
- (2) Possession is to be credibly demonstrated through documents insofar as it is not evident to the court.

Section 148

- (1) Seizure of the real estate also encompasses the objects described in section 21 subsections (1) and (2). The provision in section 23 subsection (1) sentence 2 is not applicable.
- (2) The administration and use of the real estate is withdrawn from the debtor by the seizure.

Section 149

- (1) If the debtor resides on the real estate at the time of the seizure, he or she is to be allowed to retain the rooms necessary for his or her household.
- (2) If the debtor or a member of his or her household endangers the real estate or its administration, upon application the court is to enjoin the debtor to vacate the real estate.
- (3) During the receivership of real estate that is used for agriculture, forestry or horticulture purposes, the receiver is to make funds available to the debtor from the earnings of the real estate or from its proceeds that are necessary to fulfil the indispensable needs of the debtor and his or her family. In disputed cases, the court responsible for execution decides after hearing the creditor, the debtor and the receiver. The order is appealable by an immediate complaint.

Section 150

- (1) The administrator is appointed by the court.
- (2) The court is to turn over the real estate to the administrator through the bailiff or another civil servant or to issue the authorisation to him or her to obtain possession himself or herself.

Section 150a

(1) If as to a plot of real estate subject to receivership the parties include a public body, an institute subject to government control, a mortgage bank or a settlement company within the meaning of the Reich Settlement Act (*Reichssiedlungsgesetz*), such party may recommend a person in its service as administrator within the time period set by the court responsible for execution.

(2) The court is to appoint the recommended person as administrator if the party assumes the liability incumbent upon the administrator under section 154 sentence 1 and there are no reservations as to the recommended person with regard to him or her personally or the form of administration. The recommended administrator does not receive remuneration for his or her activities.

Section 150b

(1) As to receivership of real estate used for agriculture, forestry, or horticulture purposes, the debtor is to be appointed as administrator. Such appointment is not made only if he or she is not prepared to accept it or if from the circumstances it cannot be expected that he or she will properly manage the administration.

(2) Prior to the appointment, the creditor pursuing compulsory enforcement, any parties of the type set forth in section 150a and the lower administrative authorities are to be heard.

(3) A recommendation made in accordance with section 150a is only to be taken into consideration in the event that the debtor is not appointed as administrator.

Section 150c

(1) If the debtor is appointed as receiver, the court is to appoint a supervisor. The supervisor may also be a public agency or legal person.

(2) The provisions in section 153 subsection (2) and section 154 sentence 1 apply to the supervisor accordingly. Court orders that are served on the administrator are also to be served on the supervisor. Prior to the issuance of instructions within the meaning of section 153, the supervisor is also to be heard.

(3) The supervisor is to promptly report to the court if the debtor violates any of his or her duties as administrator.

(4) The debtor is to conduct the administration under the supervision of the supervisor. He or she is obliged to provide the supervisor with information concerning the real estate, the operation and the legal relationships relating to the management and to allow review of available records at any time. To the extent there are business dealings beyond the scope of the ongoing management, the debtor is to obtain the decision of the supervisor in good time.

Section 150d

As administrator, the debtor may only exercise disposition over the usufructs of the real estate and the proceeds therefrom, notwithstanding the provisions in sections 155 to 158, with the approval of the supervisor. He or she has authorisation as to the collection of claims encompassed by the seizure without the requirement of approval; nevertheless, he or she is obliged to immediately invest the amounts that at the time are not required for necessary payments, in accordance with further order of the court.

Section 150e

The debtor does not receive any remuneration as administrator. If necessary, after hearing the supervisor, the court determines the extent of the earnings from the real estate or its

proceeds that the debtor may use to fulfil his or her indispensable needs and those of his or her family.

Section 151

- (1) The seizure is also effective upon the administrator obtaining possession of the real estate in accordance with section 150.
- (2) The court order by way of which the joinder of a creditor is admitted is to be served upon the administrator; the seizure also becomes effective upon such service in favour of the creditor if the administrator is already in possession of the real estate.
- (3) A prohibition on payments to a third-party debtor is also to be issued upon the application of the administrator.

Section 152

- (1) The administrator has the right and the duty to undertake all actions that are necessary to maintain the economic viability of the real estate and to ensure its proper use; he or she is to assert the claims encompassed by the seizure and to convert into cash uses non-essential for the administration of the real estate.
- (2) If the real estate is handed over to a lessee or usufructuary lessee prior to the seizure, the rental agreement or lease is also effective vis-à-vis the administrator.

Section 152a

The Federal Ministry of Justice and Consumer Protection is authorised to further regulate the position, duties and management of the receiver as well as his or her remuneration (fees and expenses) by way of statutory instrument with the approval of the Bundesrat. The amount of the remuneration is based upon the type and scope of the duties as well as the performance of the receiver. Both minimum rates and maximum rates are to be provided for.

Section 153

- (1) The court is to provide necessary instructions to the administrator for the administration after hearing the creditor and the debtor, establish the remuneration to be paid to the administrator and oversee the management; in suitable cases, an expert is to be consulted.
- (2) The court may require the provision of a security by the administrator, establish coercive fines against him or her and remove him or her. Coercive fines are to be warned of in advance.

Section 153a

If according to customary practice in an area, the livestock belonging to an agricultural operation are not an accessory to the real estate, if the debtor is appointed as receiver, the court responsible for execution is to issue instructions under section 153 concerning the amounts that the debtor is to provide as payment into the distribution funds for the fact that the livestock are to be fed from the proceeds of the real estate and the manner in which fulfilment of this obligation is to be secured.

Section 153b

- (1) If insolvency proceedings have been opened concerning the debtor's assets, upon application of the insolvency administrator, the complete or partial stay of the receivership is to be ordered if the insolvency administrator credibly demonstrates that economically sensible use of the insolvency estate will be significantly impaired by continuation of the receivership.

- (2) The stay is subject to the condition that the disadvantages to the creditor pursuing compulsory enforcement arising from the discontinuance are compensated by ongoing payments from the insolvency estate.
- (3) Prior to a court decision, the receiver and the creditor pursuing compulsory enforcement are to be heard.

Section 153c

- (1) Upon application of the creditor pursuing compulsory enforcement the court sets aside the order for the temporary stay if the prerequisites for the stay are no longer met, if the conditions under section 153b subsection 2 are not adhered to, or if the insolvency administrator agrees to the setting aside of the order.
- (2) Prior to a court decision, the insolvency administrator is to be heard. If the order is not set aside, the effects of the order cease upon the conclusion of the insolvency proceedings.

Section 154

The administrator is responsible for the fulfilment of all obligations incumbent upon him or her vis-à-vis all parties. He or she is to provide the creditor and the debtor with a financial account annually and at the conclusion of the administration. The financial account is to be submitted to the court and the court is to present it to the creditor and the debtor.

Section 155

- (1) The outlays for the administration as well as the costs of the proceedings with the exception of those that arise from the order commencing the proceedings or the joinder of a creditor are to be provided for in advance from the usufructs of the real estate.
- (2) Surplus funds are to be distributed among the claims designated in section 10 subsection (1) nos. 1 to 5. In this context, however, only claims in the second, third, and fourth ranking class that concern ongoing periodic payments, including payments on annuity land charges, as well as the amounts that are required to be paid as the gradual repayment of a debt as a surcharge to interest are to be taken into consideration. Instalment amounts on non-interest-bearing debt are to be taken into consideration the same as ongoing periodic payments to the extent they do not exceed five per cent of the original debt amount.
- (3) If the creditor pursuing receivership granted advance payments for repair, additions or renovation work to buildings, interest accrues on these amounts at the rate of one-half per cent above the interest rate of the marginal lending facility rate of the European Central Bank. In the receivership and enforced auction, interest has the same priority as the advance payments themselves.
- (4) If the receiver or, if the debtor has been appointed administrator, the debtor with the approval of the supervisor acquired fertiliser, seeds or animal feed necessary as part of the economic operations up until then for the proper maintenance of the business, the claims based upon these deliveries have the rank as set forth in section 10 subsection (1) no. 1. The same applies to credit taken to pay for these deliveries in the manner usual for these types of transactions.

Section 156

- (1) The current amounts for public charges are to be adjusted by the administrator without additional proceedings. This is also applicable to an enforcement concerning residential property for the current amounts from claims that are due for payment of amounts as to the charges and costs of joint property or separate property that are owed in accordance with section 16 subsection (2) and section 28 subsections (1) and (2) of the Residential Property

Act including advance payments, accruals and recourse claims of individual property owners. The provision in section 10 subsection (1) no. 2 sentence 3 is not applicable.

(2) If there is an expectation that payments could also be made in regard to other claims, after receipt of the information from the land registry designated in section 19 subsection (2), the date for the hearing regarding the distribution of the proceeds is scheduled. At the hearing, the distribution plan for the entire duration of the proceedings is presented. The date of the hearing regarding the distribution of the proceeds is to be served on the parties and the administrator. The provisions in section 105 subsection (2) sentence 2, section 113 subsection (1) and sections 114, 115, 124 and 126 apply accordingly.

Section 157

(1) Subsequent to the establishment of the distribution plan, the court is to order the payment of such amounts to the entitled persons according to the plan; the order is to be amended in the event the joinder of a creditor is subsequently admitted. Payments are to be made at the time they are due by the administrator to the extent there are sufficient funds.

(2) The provisions in sections 135 to 141 are to be adhered to in regard to the deposit of a distributed amount for unknown entitled persons. The provisions in section 142 are applicable.

Section 158

(1) For the making of payments against the principal of a mortgage, against a land charge or against the redemption sum of an annuity land charge, the court is to schedule a hearing date. An application is to be submitted by the administrator for the scheduling of a hearing date.

(2) To the extent the entitled persons have obtained satisfaction, the land registry is to be requested by the court to delete the right. A copy of the record is to be included; presentation of the certificate issued concerning the right is not required for the deletion.

(3) In all other cases, the provisions in sections 117 and 127 apply accordingly.

Section 158a

The following special provisions apply to the receivership of a plot of real estate that is encumbered with a mortgage, land charge or annuity land charge in a currency admitted in accordance with section 28 sentence 2 of the Land Register Code:

1. The amounts that are attributable to a registered right in the foreign currency are to be established in the distribution plan in the registered currency.
2. Payment is made in euros.
3. The administrator makes periodic payments in accordance with the exchange rate on the due date. The court determines payments against the principal during the hearing for payments in accordance with the latest officially determined exchange rate.

Section 159

(1) Each party may obtain an amendment to the distribution plan by bringing an action even if he or she did not lodge an objection to the plan.

(2) Return of a payment made in accordance with the plan cannot be demanded based upon subsequent amendment to the plan.

Section 160

The provisions in sections 143 to 145 concerning out-of-court distribution apply accordingly.

Section 161

- (1) Termination of the proceedings occurs by way of an order of the court.
- (2) The proceedings are to be terminated if the creditor has been satisfied.
- (3) The court may order termination if continuation of the proceedings requires special expenses and the creditor does not advance the necessary amount of money.
- (4) In all other cases, the provisions in sections 28, 29, 32 and 34 apply accordingly to the termination of the proceedings.

Part 2

Enforced auction of ships, ships under construction and aircraft through compulsory enforcement

Title 1

Enforced auction of ships and ships under construction

Section 162

The provisions in Part 1 apply accordingly to enforced auction of a ship registered in the register of ships or a ship under construction registered in the register of ships under construction or that could be registered in such register to the extent that sections 163 to 170a do not provide otherwise.

Section 163

- (1) As to the enforced auction of a registered ship, the local court in the district of which the ship is located has jurisdiction as the court responsible for execution; section 1 subsection (2) applies accordingly.
- (2) As to the proceedings, the register of ships takes the place of the land register.
- (3) The social insurance agencies including the agency responsible for unemployment insurance are deemed parties even if they have not registered a claim. As to the enforced auction of an ocean-going vessel the German social insurance for seafarers (*Knappschaft-Bahn-See*) and as to the enforced auction of an inland waterway vessel the German Social Accident Insurance Institution for Commercial Transport, Postal Logistics and Telecommunication (*Berufsgenossenschaft Verkehrswirtschaft Post- Logistik Telekommunikation*) represent the remaining insurance organisations vis-à-vis the court responsible for execution.

Section 164

The limitation in section 17 is not applicable to the enforced auction of a registered ship unless the provisions of the Commercial Code (*Handelsgesetzbuch*) or the Inland Waterways Act (*Binnenschiffahrtsgesetz*) provide otherwise; the facts necessary in this regard as a basis for the application for an enforced auction are to be credibly demonstrated through documents to the extent they are not evident to the court; the application for an enforced auction is to include a certificate from the registry authorities concerning the entry of the ship in the register of ships.

Section 165

- (1) Upon ordering an enforced auction, the court is to concurrently order the custody and safekeeping of the ship. The seizure also becomes effective upon the execution of this order.
- (2) At the same time as the temporary stay of the proceedings in agreement with the creditor pursuing compulsory enforcement, the court may order that the duties of custody and safekeeping are transferred to a trustee selected by the court. The trustee is subject to the

supervision of the court and is bound by the instructions issued to him or her by the court. In agreement with the creditor, the court may also authorise him or her to use the ship for the account of and in the name of the debtor. The court decides on the use of the net earnings. As a general rule, they are to be distributed in accordance with the principles in section 155.

Section 166

(1) If the proceedings are ordered against the skipper based upon an enforceable title that is also enforceable against the owner, the seizure is effective against the owner at the same time.

(2) In this event, the skipper is deemed a party only for as long as he or she is in charge of the ship; a new skipper is deemed a party if he or she registers with the court and credibly demonstrates his or her statements at the request of the court or a party.

Section 167

(1) As a general rule, the designation of the ship in the notice scheduling the date of the auction must be in accordance with the register of ships.

(2) The specific requirement in section 37 no. 4 must also expressly include a reference to the rights of the ship's creditors.

Section 168

(1) As a general rule, the notice scheduling the date of the auction is also to be announced in a suitable shipping trade journal. The *Land* governments are authorised to issue statutory instruments enacting further provisions in this context. The *Land* governments may transfer this authorisation to the *Land* departments of justice.

(2) If the port of registry or the home port of the ship is in the district of a different court, the notice scheduling the date of the auction is also to be announced in a publication or an electronic information and communications system of such court intended therefor.

(3) The order provided for in section 39 subsection (2) is inadmissible.

Section 168a

(repealed)

Section 168b

If a creditor regarding a ship registered his or her right within the six months prior to the announcement of the notice scheduling the date of the auction with the registry court, such registration is deemed effective before the court handling the auction. The registry court is to transmit the registrations it received within the past six months to the court handling the auction together with the documents and information designated in section 19 subsection (2).

Section 168c

The following special provisions apply to the enforced auction of a ship that is encumbered with a ship mortgage in a foreign currency:

1. The notice scheduling the date of the auction must contain the information that the ship is encumbered with a ship mortgage in a foreign currency and the designation of such currency.
2. At the auction, prior to the call for the submission of bids, the value of the ship mortgage registered in a foreign currency in accordance with the officially determined latest exchange rate in euros is to be established and announced. This exchange rate is decisive for the further proceedings.

3. The amount of the cash bid is to be established in euros. Bids are to be submitted in euros.
4. The distribution plan is to be prepared in euros.
5. If a creditor of a ship mortgage registered in a foreign currency is not completely satisfied, the remaining portion of his or her claim is to be determined in the foreign currency. The determination is decisive as to the liability of jointly encumbered objects, as to the obligation of the personal debtor and as to the assertion of default in insolvency proceedings.

Section 169

(1) If the ship has been let to a lessee or usufructuary lessee, the provisions in section 578a of the Civil Code apply accordingly. Insofar as under section 578a subsection (2) of the Civil Code the transfer of ownership comes into question as to the effect of dispositions and legal transactions concerning a tenancy or lease, the seizure of the ship is in its place decisive; if the order by way of which the enforced auction is ordered is served on the lessee or usufructuary lessee upon application of the creditor, upon such service the lessee or usufructuary lessee is deemed to know of the seizure.

(2) Insofar as the cash bid has not been adjusted by the time of the hearing regarding the distribution of the proceeds, a ship mortgage in the ship is to be registered in the register of ships as to the claim against the purchaser. The ship mortgage is created upon entry even if the purchaser has since sold the ship. In all other cases, the provisions of the Act on Rights in Registered Ships and Ships under Construction (*Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken*) of 15 November 1940 (Reich Law Gazette I. p. 1499) are applicable to a ship mortgage created by legal transaction.

Section 169a

(1) The provisions in sections 74a, 74b, and 85a are not applicable to the enforced auction of an ocean-going vessel; section 38 sentence 1 is not applicable in regard to information on the current market value.

(2) Section 68 is applicable with the proviso that a security in the amount of one-tenth of the cash bid is provided.

Section 170

(1) Judicial custody and safekeeping of the auctioned ship take the place of the administration that is admissible in accordance with section 94 subsection (1).

(2) The court is to terminate the measures enacted if the amount of money necessary for their continuation is not advanced.

(3) Section 94a is not applicable.

Section 170a

(1) The enforced auction of a ship under construction may only be ordered after it has been registered in the register of ships under construction. However, an application for an order for enforced auction may be submitted prior to the entry.

(2) Sections 163 subsection (1), 165, 167 subsection (1), 168c, 169 subsection (2) and 170 apply with the necessary modifications. The register of ships under construction takes the place of the land register. If the register of ships under construction is maintained by a court other than the court responsible for execution, the notice scheduling the date of the auction, as a general rule, must also be publicly announced in a publication intended for announcements of that court or in an electronic information and communications system

intended for the court. A time period of two weeks takes the place of the time period set forth in section 43 subsection (1) and a time period of one week takes the place of the time period set forth in section 43 subsection (2).

Section 171

(1) The provisions of Part 1 apply accordingly to the enforced auction of a foreign ship that would be required to be registered in the register of ships if it were a German vessel to the extent they do not require entry in the register of ships as a prerequisite and to the extent the following provisions do not provide otherwise.

(2) The local court in the district of which the ship is located has jurisdiction as the court responsible for execution; section 1 subsection (2) applies accordingly. An enforced auction may only be ordered if the debtor has possession of the ship, unless the Commercial Code or the Inland Waterways Act provide otherwise; the facts necessary in this regard as a basis for the application for an enforced auction are to be credibly demonstrated through documents to the extent they are not evident to the court.

(3) The notice scheduling the date of the auction must contain a demand to all entitled persons, in particular the ship's creditors, to register their rights at the latest at the auction prior to the call for the submission of bids and if the creditor objects, to credibly demonstrate their rights, upon the failure of which the rights are ranked below the claim of the creditor and the other rights in the distribution of the proceeds from the auction. As a general rule, the notice scheduling the date of the auction, insofar as this would not lead to a significant delay in the proceedings, must also be served upon the ship's creditors and other parties recognisable from the ship's documents and, if the ship is registered in the register of ships of a foreign country, such registry authority is to be informed.

(4) The provisions concerning the lowest bid are not applicable. The highest bid is to be adjusted as to its total amount by payment.

(5) The provisions in sections 165, 166, 168 subsections (1) and (3), 169a, and 170 subsections (1) and (3) are applicable. The guarding and safekeeping of the ship ordered by the court may only be terminated and the ship handed over to the purchaser when evidence is provided of the adjustment of the highest bid or the agreement of the parties.

Title 2

Enforced auction of aircraft

Section 171a

The provisions of Part 1 apply accordingly to the enforced auction of an aircraft registered in the register of aircraft insofar as sections 171b to 171g do not provide otherwise. The same applies to the enforced auction of an aircraft entered into the register of aircraft liens, the entry of which has been deleted from the register of aircraft.

Section 171b

(1) As to the enforced auction of an aircraft, the local court in the district of which the Federal Aviation Office (*Luftfahrt-Bundesamt*) is headquartered has jurisdiction as the court responsible for execution.

(2) The register of aircraft liens takes the place of the land register for the proceedings.

Section 171c

(1) The enforced auction may only be ordered after the aircraft is entered into the register of aircraft liens. However, an application for an order for enforced auction may be submitted prior to the entry.

(2) Upon ordering the enforced auction, the court is to concurrently order the custody and safekeeping of the aircraft. The seizure also becomes effective upon the execution of this order.

(3) At the same time as the temporary stay of the proceedings, in agreement with the creditor pursuing compulsory enforcement, the court may order that the duties of custody and safekeeping are transferred to a trustee selected by the court. The trustee is subject to the supervision of the court and is bound by the instructions issued to him or her by the court. In agreement with the creditor, the court may also authorise that the aircraft be used for the account of and in the name of the debtor. The court decides on the use of the net earnings. As a general rule, they must be distributed in accordance with the principles in section 155.

Section 171d

(1) As a general rule, the designation of the aircraft in the notice scheduling the date of the auction must be in accordance with the register of aircraft liens.

(2) The order provided for in section 39 subsection (2) is inadmissible.

Section 171e

The following special provisions apply to the enforced auction of an aircraft that is encumbered with a registered lien in a foreign currency:

1. The notice scheduling the date of the auction must contain the information that the aircraft is encumbered with a registered lien in a foreign currency and the designation of such currency.
2. At the auction, prior to the call for the submission of bids, the value of the registered lien entered in a foreign currency is established and announced in accordance with the officially determined latest exchange rate in euros. This exchange rate is decisive for the further proceedings.
3. The amount of the cash bid is to be established in euros. Bids are to be submitted in euros.
4. The distribution plan is to be prepared in euros.
5. If a creditor of a registered lien entered in a foreign currency is not completely satisfied, the remaining portion of his or her claim is to be determined in the foreign currency. The determination is decisive as to the liability of jointly encumbered objects, as to the obligation of the personal debtor, and as to the assertion of default in insolvency proceedings.

Section 171f

Section 169 applies to aircraft accordingly.

Section 171g

(1) Judicial custody and safekeeping of the auctioned aircraft take the place of the administration that is admissible in accordance with section 94 subsection (1).

(2) The court is to terminate the measures enacted if the amount of money necessary for their continuation is not advanced.

(3) Section 94a is not applicable.

Section 171h

The provisions in sections 171a to 171g apply accordingly to the enforced auction of a foreign aircraft insofar as sections 171i to 171n do not provide otherwise.

Section 171i

(1) Only fees, customs duties, fines and penalties arising from provisions concerning aircraft, customs duties and immigration are satisfied in the third class (section 10 subsection (1) no. 3).

(2) Claims for interest arising from rights under section 103 of the Act on Rights in Aircraft (*Gesetz über Rechte an Luftfahrzeugen*) of 26 February 1959 (Federal Law Gazette I p. 57) enjoy the priority of the fourth class (section 10 subsection (1) no. 4) based on the current amounts and arrears from the past three financial years.

Section 171k

If the aircraft is sold after the seizure or is encumbered with a right under section 103 of the Act on Rights in Aircraft and if the sale or encumbrance is to be recognised in accordance with Article VI of the Geneva Convention of 19 June 1948 (Federal Law Gazette 1959 II p. 129), the disposition is effective vis-à-vis the creditor unless the debtor knew of the seizure at the time of the disposition.

Section 171l

(1) The court responsible for execution informs the public authority that maintains the register in which the rights in the aircraft are entered of the order for enforced auction, if possible by airmail.

(2) The time period between the scheduling of the date and the date of the auction must be at least six weeks. Service of the notice scheduling the date of the auction on parties who live outside of Germany is effected by mailing. "Registered mail" must be stated on the mail item. When possible, it must be conveyed by airmail. The creditor at issue is to publicly announce the upcoming auction at least one month prior to the date at the location where the aircraft is entered in accordance with the provisions applicable there.

Section 171m

A complaint against the granting of knockdown is to be filed within six months. If it is based upon the grounds in section 100, it must be filed within an emergency period of two weeks and thereafter it may only be based upon a violation of the provisions in section 171l subsection (2).

Section 171n

If the right of possession in an aircraft based upon a rental agreement that was concluded for six or more months is extinguished by knockdown, the provisions concerning reimbursement as to a usufruct apply accordingly.

Part 3

Enforced auction and receivership in special cases

Section 172

If the application for enforced auction or receivership is submitted by the insolvency administrator, the provisions in Parts 1 and 2 apply accordingly, insofar as sections 173 and 174 do not provide otherwise.

Section 173

The order through which proceedings are ordered is not deemed to be seizure. Within the meaning of sections 13 and 55, however, service of the court order on the insolvency administrator is to be considered seizure.

Section 174

If a creditor has a right to satisfaction from the real estate that is recognised by the insolvency administrator concerning a claim against the debtor in the insolvency proceedings, up until the conclusion of the proceedings at the auction he or she may request that in the determination of the lowest bid only those rights with priority above his or her claims be considered; in such a case, the plot of real estate is also to be offered with the requested variation.

Section 174a

The insolvency administrator may request up until the conclusion of the proceedings at the auction that in the determination of the lowest bid only those rights with priority above the claims set forth in section 10 subsection (1) no. 1a be considered; in such a case the plot of real estate is also to be offered with the requested variation.

Section 175

(1) If a creditor of the succession has a right to satisfaction from a plot of real estate that is part of the estate for his or her debt, the heir may apply for an enforced auction of the plot of real estate subsequent to acceptance of the inheritance. Every other person who could apply for a public notice procedure concerning creditors of the succession is also entitled to submit such an application.

(2) These provisions are not applicable if the heir has unlimited liability as to the obligations of the estate or if the creditor of the succession is excluded in a public notice procedure or is deemed to be on the same footing as an excluded creditor under sections 1974 and 1989 of the Civil Code.

Section 176

If an application for an enforced auction is submitted under section 175, the provisions of Parts 1 and 2 as well as of sections 173 and 174 apply accordingly, insofar as sections 177 and 178 do not provide otherwise.

Section 177

The applicant is to credibly demonstrate through documents the facts that provide the basis for his or her right to submit the application to the extent they are not evident to the court.

Section 178

(1) As a general rule, an enforced auction may not be ordered when there has been an application for the opening of insolvency proceedings as to the estate.

(2) The enforced auction is not terminated by the opening of insolvency proceedings as to the estate; as to the further proceedings, the insolvency administrator is deemed to be the applicant.

Section 179

If a creditor of the succession who could demand that the lowest bid be determined without consideration of his or her claim in accordance with section 174 is considered in the determination of the lowest bid, his or her satisfaction from the remaining estate may be denied.

Section 180

- (1) If the purpose of the enforced auction is to terminate a joint ownership, the provisions of Parts 1 and 2 apply accordingly insofar as sections 181 to 185 do not provide otherwise.
- (2) A temporary stay of the proceedings is to be ordered upon the application of a co-owner for a duration of a maximum of six months if this appears reasonable when considering the conflicting interests of the various co-owners. One-time repetition of the stay is admissible. Section 30b applies accordingly.
- (3) If a co-owner pursues the enforced auction as the means for termination of joint ownership comprised of only the co-owner and his or her spouse, former spouse, life partner or former life partner, the temporary stay of the proceedings is to be ordered upon the application of such spouse, former spouse, life partner or former life partner if this is necessary to avoid serious endangerment to the welfare of a common child. Multiple repetitions of the stay are admissible. Section 30b applies accordingly. Upon request, the court revokes or amends its order if this is necessary in view of a change in the circumstances.
- (4) The proceedings may not be temporarily stayed for more than a total of five years through orders in accordance with subsections (2) and (3).

Section 181

- (1) An enforceable title is not necessary.
- (2) The enforced auction of a plot of real estate, a ship, a ship under construction or an aircraft may only be ordered when the applicant has been entered as owner in the land register, register of ships, register of ships under construction or register of liens on aircraft or is an heir of an entered owner, or if he or she exercises the right of the owner or the heir as to termination of joint ownership. An application by the guardian of a co-owner may only be made with the approval of the family court and by the custodian of a co-owner only with the approval of the custodianship court.
- (3) (repealed)
- (4) The provision in section 17 subsection (3) is also applicable to the applicant's heirs.

Section 182

- (1) In the determination of the lowest bid, the rights in the plot of real estate that encumber or jointly encumber the applicant's portion as well as all rights that have priority above or are equal to such rights are to be considered.
- (2) If in so doing as to one portion, a larger amount is to be considered than as to another portion, the lowest bid is to be increased in order to reach the amount necessary for equalisation among the co-owners.
- (3) (repealed)

Section 183

In the event of the rent or lease of the real estate the measures provided for in sections 57a and 57b are not applicable.

Section 184

A co-owner is not required to provide security for his or her bid if he or she has a mortgage, land charge or annuity land charge covered in whole or in part by the bid.

Section 185

(1) If a proceeding concerning an application for allocation of an agricultural operation under section 13 subsection (1) of the Real Property Transactions Act (*Grundstückverkehrsgesetz*) of 28 July 1961 (Federal Law Gazette I p. 1091) is pending and the application encompasses a plot of real estate as to which an enforced auction has been ordered under section 180, the enforced auction proceedings are to be stayed as to this plot of real estate upon application until a final and binding decision has been taken as to the application for allocation.

(2) If the enforced auction of several plots of real estate has been ordered and if the application for allocation only relates to one of the plots or certain individual plots, the court responsible for execution may order that the enforced auction be stayed also on account of the plots of real estate not encompassed by the allocation proceedings.

(3) If an application for allocation is granted, the enforced auction is to be terminated to the extent it relates to the real estate allocated and in all other cases, it is to be continued.

(4) Evidence that the prerequisites for the stay and termination of the enforced auction proceedings have been met is to be provided by the applicant.

Section 186

Sections 3, 30c, 38, 49, 68, 69, 70, 72, 75, 82, 83, 85, 88, 103, 105, 107, 116, 117, 118, 128, 132, 144 and 169 in the version of Article 11 of the Act of 22 December 2006 (Federal Gazette I p. 3416) are only applicable to proceedings pending on 1 February 2007 to the extent payments are to be made later than two weeks after this date.