

Estonia

Family Law Act

Passed 12 October 1994

(RT¹ I 1994, 75, 1326),

entered into force 1 January 1995,

amended by the following Acts:

23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124;

15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1;

24.03.2004 entered into force 08.04.2004 - RT I 2004, 22, 148;

25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92;

03.12.2003 entered into force 01.01.2004 - RT I 2003, 78, 527;

05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336;

30.05.2001 entered into force 30.06.2001 - RT I 2001, 53, 307;

17.01.2001 entered into force 01.03.2001 - RT I 2001, 16, 69;

31.05.2000 entered into force 01.08.2000 - RT I 2000, 50, 317;

17.04.97 entered into force 19.05.97 - RT I 1997, 35, 538;

12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422;

26.06.96 entered into force 26.07.96 - RT I 1996, 49, 953;

28.05.96 entered into force 08.06.96 - RT I 1996, 40, 773.

Part I

Marriage

Chapter 1

Contraction of Marriage

§ 1. Procedure for contraction of marriage

(1) A marriage is contracted between a man and a woman.

(2) A marriage has legal effect only if the marriage is registered at a vital statistics office upon contraction of the marriage.

(3) A marriage shall be contracted not earlier than one month and not later than three months after submission of an application to a vital statistics office by the prospective spouses.

(4) At the request of the prospective spouses, a vital statistics office may with good reason shorten or extend the term provided for in subsection (3) of this section. The term may be extended for up to six months after submission of the application.

(5) Prospective spouses contract marriage with both being present in person at the same time. A marriage is contracted when the marriage registration is signed by the prospective spouses.

§ 2. Prerequisites for contraction of marriage

(1) A marriage is contracted on the mutual desire of the prospective spouses.

(2) A marriage shall not be contracted if a prospective spouse does not confirm his or her desire to marry or if a prospective spouse is not of the age to marry or if circumstances set out in § 4 of this Act become evident.

§ 3. Age of marriage

(1) A person who has attained eighteen years of age is of age to marry.

(2) A minor between fifteen and eighteen years of age may marry with the written consent of his or her parents or guardian.

(3) If a child has one parent or if the other parent is missing or a guardian has been appointed to the other parent due to his or her restricted active legal capacity or if one parent is deprived of parental rights, the consent of one parent is sufficient for the minor between fifteen and eighteen years of age to marry.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) If even one of the parents or a guardian does not consent to the marriage, a court may grant permission to marry on the application of one parent or the guardianship authority. A court shall grant permission to marry if the marriage is in the interests of the minor.

§ 4. Hindrances to contraction of marriage

A marriage shall not be contracted:

- 1) between persons of whom at least one is already married;
- 2) between direct ascendants and descendants, brothers and sisters, half-brothers and half-sisters, adoptive parents and adopted children, or between children adopted by the same person;
- 3) between persons of whom at least one has been placed under guardianship due to his or her restricted active legal capacity (except in the cases specified in subsections 3 (2)-(4) of this Act).

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 4¹. Right of minister of religion to refuse to contract marriage

In addition to the provisions of § 4 of this Act, a minister of religion of a church, congregation or association of congregations who has been granted the right to contract marriages by the Minister of Regional Affairs pursuant to § 130¹ of this Act, has the right to refuse to contract a marriage if a prospective spouse does not meet the requirements for the contraction of marriage according to the religion of the church, congregation or association of congregations.

(30.05.2001 entered into force 30.06.2001 - RT I 2001, 53, 307; 24.03.2004 entered into force 08.04.2004 - RT I 2004, 22, 148)

Chapter 2

Personal Rights of Spouses

§ 5. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 6. Prohibition on restrictions

Agreements which restrict the personal rights and freedoms of spouses are void.

Chapter 3

Proprietary Rights of Spouses

Division 1

General Provisions

§ 7. Basis for proprietary rights of spouses

Proprietary rights of spouses are specified by law and, if entered into, a marital property contract.

Division 2

Marital property contract

§ 8. Definition of marital property contract

(1) Spouses may specify mutual proprietary rights and obligations different from that provided for in Division 3 of this Chapter in a marital property contract unless otherwise provided by law.

(2) If a marital property contract is not entered into or if the contract does not include all property of the spouses, the provisions of Division 3 of this Chapter apply with respect to the property of the spouses or to the property not included in the marital property contract.

§ 9. Content of marital property contract

(1) A marital property contract may specify:

1) which property belonging to a spouse before the marriage remains the separate property of the spouse and which property becomes joint property of the spouses;

2) which of the property acquired or to be acquired during the marriage is joint property and which is separate property;

3) how to possess, use and dispose of joint property of the spouses;

4) how to divide joint property of the spouses;

5) mutual maintenance duties of the spouses during the marriage and upon termination of the marriage;

6) other mutual proprietary rights and obligations of the spouses unless this is contrary to law.

(2) A marital property contract shall not:

- 1) deem property acquired by a spouse by gift or succession with the condition that it belong to the spouse as separate property to be joint property of the spouses;
- 2) deny a spouse or divorced spouse the right to receive maintenance on the bases provided for in Chapter 4 of this Act;
- 3) waive the right to divide joint property of the spouses upon termination of the marriage.

§ 10. Entry into marital property contract

- (1) A marital property contract may be entered into before or during a marriage.
- (2) A marital property contract may be amended or a new marital property contract may be entered into by agreement of the parties. A marital property contract entered into earlier is valid in the unamended part and in the part which is not contrary to a marital property contract entered into later.
- (3) A minor between fifteen and eighteen years of age may enter into a marital property contract if the minor has been granted consent or permission to marry (§ 3).
- (4) A marital property contract shall be notarised.
- (5) The mutual rights and obligations of a marital property contract entered into before a marriage arise as of the date of contraction of the marriage.
- (6) At the request of a spouse, a marital property contract is entered in the marital property contract register. Proprietary rights of a spouse arising from a marital property contract are valid with respect to third persons if an entry concerning the marital property contract is made in the marital property contract register before the claim of the third person arises. The marital property contract register is maintained pursuant to procedure provided by law.

§ 11. Termination of marital property contract during marriage

- (1) A marital property contract is terminated by a notarised agreement of the parties or by a court at the request of a spouse.
- (2) A spouse has the right to request termination of a marital property contract if:
 - 1) a court has established the fact that the other spouse is missing;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- 2) a court declares the bankruptcy of one spouse;
- 3) the other spouse significantly damages the property of the spouses or performs acts which may substantially damage the property of spouses.

(3) Upon termination of a marital property contract, the rights and obligations arising from the marital property contract extinguish. The joint property and separate property of the spouses subject to a marital property contract shall be determined and the joint property shall be divided according to the marital property contract.

(4) Upon termination of a marital property contract by agreement of the parties, the spouses may agree that the marital property contract was not entered into in its entirety or in certain parts.

§ 12. Marital property contract upon termination of marriage

(1) A marital property contract terminates upon the death of a spouse or upon divorce.

(2) Upon termination of a marital property contract due to the death of a spouse or divorce, the rights and obligations arising from the marital property contract extinguish. The joint property and separate property of the spouses shall be determined and the joint property shall be divided according to the marital property contract.

(3) If the duty to provide maintenance for a divorced spouse after divorce arises from a marital property contract, the duty continues in effect after the divorce.

§ 13. Invalidity of marital property contract

(1) If a marital property contract is declared invalid or is void on the basis of the provisions of the General Principles of the Civil Code concerning invalidity of transactions, the provisions of Division 3 of this Chapter apply to property acquired during the marriage.

(2) Upon annulment of a marriage, the marital property contract is void. In such case, the provisions of subsections 36 (3) or (4) apply with respect to property acquired during the marriage which has been annulled.

Joint and Separate Property

§ 14. Joint property

(1) Property acquired by spouses during the marriage is the joint property of the spouses.

(2) A court may declare the separate property of a spouse, the value of which has significantly increased as a result of the work or monetary expenses of the spouses during the marriage, to be partly or wholly the joint property of the spouses.

§ 15. Separate property

(1) Separate property of a spouse is property which was in the ownership of the spouse before the marriage, property acquired by the spouse during the marriage as a gift or by succession, and property acquired by the spouse after termination of conjugal relations.

(2) Personal effects acquired during a marriage are the separate property of the spouse.

§ 16. Transactions by spouses

Spouses may enter into transactions with each other concerning separate property and enter into agreements on full or partial division of joint property, and agreements on possession, use and disposal of joint property or of a part thereof.

§ 17. Possession, use and disposal of joint property

(1) Each spouse has an equal right to possess, use and dispose of joint property.

(2) Spouses shall possess, use and dispose of joint property by agreement. Failing agreement, a court shall, at the request of a spouse, settle disputes regarding possession and use of joint property.

(3) If one spouse enters into a transaction to transfer a movable in the joint ownership of the spouses, consent of the other spouse is presumed.

(4) A movable in the joint ownership of spouses subject to entry in the register shall not be transferred or pledged without the written consent of the other spouse regardless of in which spouse's name the movable is entered in the register.

(5) If an immovable may be deemed to be the joint property of spouses on the basis of the provisions of Divisions 2 and 3 of this Chapter and one spouse is entered in the land register as the owner of the immovable, the other spouse is entered in the land register as a joint owner on the basis of a notarised joint application. If the spouse entered as the owner in the land register refuses to submit a joint application, the other spouse may, by a court proceeding, request declaration of himself or herself as joint owner and amendment of the land register entry.

§ 18. Division of joint property

(1) Joint property of spouses may be divided during marriage, upon divorce or after divorce.

(2) If the conjugal relations of spouses have not terminated at the time of division of joint property, the joint property shall be determined as at the date of division. If joint property is divided after termination of conjugal relations, the joint property shall be determined as at the date of termination of conjugal relations.

(3) Spouses shall divide joint property by agreement.

(4) Agreements on the division of immovables in the joint ownership of spouses shall be notarised.

(5) In the case of a dispute, a court shall divide joint property at the request of one or both spouses.

(6) Property which is not divided upon division of joint property, and property acquired by spouses during the marriage after division of joint property is the joint property of the spouses.

§ 18¹. Division of joint property in enforcement proceeding

If an enforcement proceeding is commenced against one of the spouses and his or her separate property is not sufficient to cover the claim, the claimant may file an action with a court for the division of the joint property of spouses.

(17.01.2001 entered into force 01.03.2001 - RT I 2001, 16, 69)

§ 19. Shares upon division of joint property

(1) Upon division of the joint property of spouses, the shares of the spouses shall be deemed to be equal even if one spouse did not earn an income due to the raising of a child or for other good reasons.

(2) A court may derogate from equality of shares of spouses:

- 1) in consideration of the particular interests of a child or the other spouse;
- 2) if without good reasons one spouse did not participate in the acquisition of joint property with his or her income or work;
- 3) if the joint property was acquired out of the separate property of one spouse;
- 4) if the value of the separate property of a spouse has significantly increased during the marriage out of the work or monetary expenses of the other spouse or out of the joint property of the spouses.

(3) Upon division of the joint property of spouses, the property remaining with each spouse shall be designated as a share in common ownership of things or proprietary rights and obligations.

(4) If upon division of joint property the value of the property remaining with a spouse is greater than his or her share in the joint property, a court shall order monetary compensation to be paid by the spouse to the other spouse.

§ 20. Liability for obligations of spouse

(1) A spouse is liable for his or her proprietary obligations with his or her separate property and with the share of the joint property which would belong to the spouse upon division of joint property.

(2) Spouses are liable for proprietary obligations assumed in the interests of the family with the joint property and the separate property of both spouses.

(3) If due to a crime committed by one spouse, the joint property of the spouses or the separate property of the other spouse increases, the damage caused by the crime shall, in addition to that specified in subsection (1) of this section, also be compensated for out of the share of the joint property of the other spouse and out of the separate property of the other spouse to the extent by which his or her separate property increased due to the crime.

Chapter 4

Maintenance of Spouse

§ 21. Duty of maintenance of spouse

A spouse is required to maintain a spouse who needs assistance and is incapacitated for work, and to maintain a spouse during pregnancy and child-care until the child attains three years of age if the financial situation of the obligated spouse allows for provision of maintenance.

§ 22. Duty of maintenance after divorce

(1) A divorced spouse who needs assistance and is incapacitated for work has the right to receive maintenance from his or her former spouse if the divorced spouse became disabled or attained pensionable age during the marriage and if the financial situation of the obligated divorced spouse allows for provision of maintenance.

(2) A divorced spouse has the right to receive maintenance during pregnancy and child-care until the child attains three years of age if the child was conceived during the marriage, and if the financial situation of the obligated divorced spouse allows for provision of maintenance.

(3) If a marriage lasted at least twenty-five years, a divorced spouse has the right to receive maintenance from the divorced spouse even if the spouse who needs assistance attained pensionable age or became disabled within three years after the divorce and if the financial situation of the obligated divorced spouse allows for provision of maintenance.

§ 23. Amount of support

(1) If a spouse or divorced spouse fails to perform the duty to provide maintenance provided for in §§ 21 and 22 of this Act, a court shall order support in the form of a monthly support payment for maintenance of the spouse or divorced spouse based on the financial situation of each spouse and the need for assistance.

(2) Upon a change in the financial situation or the need for assistance, a spouse or divorced spouse may request a change in the amount of support or termination of payment of support.

§ 24. Release from duty of maintenance

A court may release a spouse from the duty to provide maintenance to the other spouse or limit the duty with a time period:

1) if the behaviour of the spouse requesting support was indecent during the marriage;

2) if the marriage lasted a short time, or upon other good reason as established by the court.

§ 25. Termination of duty of maintenance

The duty to provide maintenance to a spouse terminates if the grounds for the duty to provide maintenance provided for in §§ 21 and 22 of this Act cease to exist or if the divorced spouse receiving maintenance remarries.

Chapter 5

Termination of Marriage

§ 26. Grounds for termination of marriage

A marriage terminates upon the death of a spouse or upon divorce.

§ 27. Divorce

(1) A vital statistics office or a court grants a divorce.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(2) A divorce may be granted by a vital statistics office if both spouses reside in Estonia.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

§ 28. Divorce granted by vital statistics office

(1) A vital statistics office grants a divorce upon agreement of the spouses on the basis of a joint written petition which the spouses submit in person to a vital statistics office. A divorce is granted not earlier than one month and not later than three months after submission of a petition.

(2) If a spouse cannot appear at a vital statistics office in person for submission of a joint petition, he or she may submit a separate notarised petition. A spouse staying in a foreign state may submit a written petition on which the signature of the petitioner is confirmed by a consular officer of the Republic of Estonia. The format of petitions completed in a foreign state shall be approved by a regulation of the Minister of Internal Affairs.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(3) A vital statistics office grants a divorce on the basis of a petition of one spouse if a court has established the fact that the other spouse is missing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) A vital statistics office shall not grant a divorce if together with the divorce a spouse desires to resolve a dispute concerning a child or concerning the division of joint property or desires support to be ordered.

§ 29. Divorce granted by court

(1) A court grants a divorce at the request of a spouse if:

- 1) the spouses disagree about the divorce,
- 2) together with the divorce a spouse desires to resolve a dispute specified in subsection 28 (4) of this Act or
- 3) a vital statistics office is not competent to grant the divorce.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(2) A divorce shall be granted if a court ascertains that continuation of the marriage is impossible.

(3) Upon granting a divorce, a court shall, at the request of the spouses, settle disputes concerning a child and disputes concerning support or division of joint property. If a court does not satisfy a petition for divorce, requests in disputes concerning a child, support or division of joint property shall not be heard.

(4) If a third person has submitted a claim with respect to joint property, a court shall resolve a dispute concerning division of joint property in a proceeding separate from the divorce.

(5) A court shall, within ten days after the entry into force of a court order granting a divorce, send a copy of the court order to the vital statistics office where the marriage was contracted.

§ 30. Date of termination of marriage

A marriage terminates:

- 1) upon the death of a spouse, as of the death of the spouse;
- 2) upon a divorce granted by a vital statistics office, as of divorce registration;

3) upon a divorce granted by a court, as of the entry into force of the court order.

§ 31. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 32. Restoration of marriage

(1) Upon return of a spouse who has been declared dead, a marriage shall be deemed to be restored if neither spouse has remarried. A marriage shall be deemed to be restored after the entry into force of the court order recalling the declaration of death.

(2) A marriage which was terminated by divorce due to a spouse being missing may be restored upon return of the missing spouse if neither divorced spouse has remarried. A vital statistics office restores a marriage on the basis of a petition of the spouses. A marriage shall be deemed to be restored upon annulment of the divorce notation in the marriage registration.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

Chapter 6

Invalidity of Marriage

§ 33. Grounds for annulment

(1) A court shall annul a marriage only if the provisions of §§ 3 and 4 of this Act have been violated upon contraction of the marriage, if an ostensible marriage was contracted or if consent for marriage was obtained against the will of a prospective spouse by fraud or duress.

(2) A court shall, within ten days after the entry into force of a court order annulling a marriage, send a copy of the court order to the vital statistics office where the marriage was contracted.

§ 34. Right of claim for annulment of marriage

(1) Annulment of marriage may be requested by:

1) a spouse who is a minor, his or her parent or guardian if the marriage was contracted in violation of the provisions of § 3 of this Act;

2) a spouse if an ostensible marriage was contracted or if the marriage was contracted in violation of the provisions of § 4 of this Act;

3) a spouse whose agreement for marriage was acquired against his or her will by fraud or duress;

4) other persons whose rights are violated by violation of the provisions of § 4 of this Act.

(2) The limitation period for a claim for annulment of a marriage contracted by fraud or duress is one year after the contraction of marriage.

§ 35. Preclusion of annulment of marriage

A court may deny annulment of a marriage if the circumstances which are the grounds for annulment of the marriage pursuant to subsection 33 (1) of this Act cease to exist.

§ 36. Consequences of annulment of marriage

(1) A marriage is annulled from inception.

(2) Persons whose marriage has been annulled do not have any rights or obligations with respect to one another arising from the marriage.

(3) If a marriage has been annulled, the provisions of common ownership apply with respect to the property acquired jointly by the spouses during the void marriage. In the case of a dispute, a court shall specify the shares of the co-owners.

(4) If a marriage is annulled because one of the prospective spouses concealed from the other prospective spouse that he or she was already married, or influenced the other spouse to marry by fraud or duress, a court may order support for the person who was in a void marriage with him or her on the bases provided for in §§ 21 and 22 of this Act and, at the request of the person, divide the property acquired during the void marriage on the basis of the provisions of Division 3 of Chapter 3 of this Act.

§ 37. Children born of void marriage

Children born of an annulled marriage have the same rights and duties as children born in a marriage.

Part II

Family

Chapter 7

Filiation of Children

§ 38. Legal effect of filiation

- (1) The mutual rights and obligations of parents and children arise from the filiation of children which is proven pursuant to procedure provided by law.
- (2) A child descends from the mother who gives birth to the child.
- (3) A child descends from the father by whom the child is conceived.
- (4) For the purposes of this Act, a child is a minor.

§ 39. Filiation from man who is married to mother of child

- (1) A child who is born or conceived during the marriage of the parents shall be deemed to be descended from the man who is married to the mother of the child.
- (2) In the birth registration of a child, the person who gives birth to the child is entered as the mother and the person who is married to the mother of the child is entered as the father on the basis of an application of either person.
- (3) If a child born or conceived during a marriage does not descend from the man who is married to the mother of the child, the man shall not be entered as the father in the birth registration of the child on the basis of a joint application of the spouses.
- (4) A child who is born after the death of the man who was married to the mother of the child shall be deemed to be conceived during the marriage if not more than ten months pass from the date of death of the man to the birth of the child.
- (5) A child who is born after a divorce or annulment of marriage shall be deemed to be conceived during the marriage if not more than ten months pass from the date of divorce or annulment of marriage to the birth of the child.
- (6) If a man has given written consent to the artificial insemination of his spouse, the child shall be deemed to descend from him.

§ 40. Confidentiality of artificial insemination

(1) A donor for artificial insemination does not have the right to demand ascertainment of the identity of the mother or child or declaration of himself as father of the child.

(2) A court shall not establish the filiation of a child from a donor for artificial insemination.

(3) Persons who arrange artificial insemination are required to maintain the confidentiality of the artificial insemination.

§ 41. Ascertainment of filiation from father not married to mother of child

(1) The filiation of a child from the father who is not married to the mother of the child shall be ascertained on the basis of the joint written application of the father and mother which is submitted in person to a vital statistics office.

(2) If there is reason to believe that submission of the joint application specified in subsection (1) of this section may be impossible or difficult after the birth of the child, the application may be submitted during the pregnancy of the woman.

(3) If the parents cannot submit a joint application to a vital statistics office in person, each may submit a notarised application. A parent staying in a foreign state may submit a written petition on which the signature of the petitioner is confirmed by a consular officer of the Republic of Estonia. The format of petitions completed in a foreign state shall be approved by a regulation of the Minister of Internal Affairs.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(4) The filiation of a child from the father shall be ascertained on the basis of an application of the father if:

- 1) the mother of the child is deceased;
- 2) the mother of the child is missing or a guardian has been appointed to her due to his or her restricted active legal capacity;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- 3) the location of the mother of the child cannot be ascertained;
- 4) the mother of the child has been deprived of parental rights.

(5) On the basis of the joint application of the parents or an application of the father, a vital statistics office shall make an entry in the birth registration concerning the father of the child.

§ 42. Establishment of filiation from father not married to mother of child

(1) If the parents of a child are not married to each other and filiation of the child cannot be ascertained, the filiation of the child from the father may be established in a court at the request of the mother, the guardian of the child, a guardianship authority or a person who considers himself to be the father of the child. If filiation of a child is not established before the child becomes an adult, filiation of the child from the father may be established only at the request of the child who has become an adult.

(2) A court shall establish filiation from the father on the basis of circumstances which allow for the man to be considered the father of the child.

(3) A court shall, within ten days after the entry into force of a court order establishing filiation, send a copy of the court order to the vital statistics office where the birth registration of the child is located.

§ 43. Entry of name of father of child born outside marriage

(1) If a child is born to a mother who is not married and filiation of the child from the father is not ascertained or established pursuant to the procedure provided for in §§ 41 and 42 of this Act, no entry concerning the father shall be made in the birth registration of the child. At the request of the mother, the surname of the mother is entered as the surname of the father and the name stated by the mother is entered as the given name of the father in the birth registration.

(2) If a child born or conceived during a marriage does not descend from the man married to the mother and filiation of the child from the father is not ascertained or established pursuant to the procedure provided for in §§ 41 and 42 of this Act, no entry concerning the father shall be made in the birth registration of the child. At the request of the mother, the surname of the mother is entered as the surname of the father and the name stated by the mother is entered as the given name of the father in the birth registration.

(3) An entry concerning the name of the father made on the bases specified in subsections (1) and (2) of this section shall not prove filiation of the child from the father.

§ 44. Contestation of entry concerning parent

(1) A court may declare an entry concerning a parent in the birth registration of a child incorrect if the court establishes that the child does not descend from the parent.

(2) An entry concerning a parent may be contested in a court by:

1) the person who is entered as the father or mother of a child in the birth registration of the child;

2) a person who requests declaration as a parent if another person is entered as the parent in the birth registration;

3) the guardian of a child or a child who has become an adult.

(3) The limitation period of a claim to declare an entry incorrect is one year after the date a person became or should have become aware of the incorrectness of the entry. If a minor became aware that he or she was incorrectly entered in a birth registration as the mother or father of a child, the limitation period begins to run from the time the minor becomes an adult.

(4) Filiation of a child from the mother may be established by a court if there is no entry in the birth registration concerning the mother or if the court declares the entry concerning the mother incorrect. The limitation period specified in subsection (3) of this section applies to a claim for establishment of filiation of a child from the mother.

(5) A person who at his own request or at the joint request of himself and the mother is entered in a birth registration as the father of a child may not contest the entry if at the time of submission of the application he knew that he was not the father of the child.

(6) Neither spouse who consents in writing to artificial insemination shall contest the entry concerning the father in a birth registration.

§ 45. Rights and duties of child born outside marriage

A child who descends from parents who are not married to each other has the same rights and duties with respect to his or her parents and their relatives as a child who descends from parents who are married to each other.

§ 46. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 47. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 48. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

Chapter 8

Rights and Duties of Parents

§ 49. Equality of rights and duties of parents

Parents have equal rights and duties with respect to their children.

§ 50. Rights and duties of parents

(1) Parents have the right and duty to raise a child and to care for a child.

(2) A parent is required to protect the rights and interests of his or her child. A parent is the legal representative of a child. As a legal representative, the parent has the authorisation of a guardian.

(3) A parent has the right to demand his or her child back from any person who has control of the child without legal basis. The parent does not have the right to the return of the child if the return of the child is evidently contrary to the interests of the child.

(4) A parent shall not exercise parental rights contrary to the interests of a child.

§ 51. Residence of child in case of parents living apart

If parents live apart, they shall agree with which parent a child shall reside. In the absence of an agreement, a court shall settle the dispute at the request of a parent.

§ 52. Access to child

(1) A parent living apart from a child has the right of access to the child. A parent with whom a child resides shall not hinder the other parent's access to the child.

(2) If parents have not agreed in what manner the parent living apart participates in the raising of a child and has access to the child, a guardianship authority or, at the request of a parent, a court shall settle the dispute.

§ 53. Removal of child from parent

(1) At the request of a parent, guardian or guardianship authority, a court may decide to remove a child from one or both parents without deprivation of parental rights if it is dangerous to leave the child with the parents.

(2) If leaving a child with a parent threatens the health or life of the child, a guardianship authority may remove the child from the parent prior to obtaining a court order. In such case the guardianship authority must file a claim with a court within ten days for removal of the child or for deprivation of parental rights.

(3) If upon removal of a child from a parent the child is left without parental care, a guardianship authority shall arrange for care of the child.

(4) If the reasons for removal of a child cease to exist, a court may order return of the child at the request of a parent.

§ 54. Deprivation of parental rights

(1) At the request of a parent, guardian or guardianship authority, a court may deprive a parent of parental rights if the parent:

1) does not fulfil his or her duties in raising or caring for a child due to abuse of alcoholic beverages, narcotic or other psychotropic substances, or other reason which the court does not deem to be persuasive; or

2) abuses parental rights; or

3) is cruel to a child; or

4) has a negative influence on a child in some other manner; or

5) without good reason, has not during one year participated in raising a child who resides in a child care institution.

(2) In hearing a claim for deprivation of parental rights, the court shall include a guardianship authority for the purpose of hearing its opinion in the proceeding.

(3) Upon depriving a parent of parental rights, a court shall order removal of a child from the parent.

(4) If upon depriving a parent of parental rights a child is left without parental care, a guardianship authority shall arrange for care of the child.

(5) A court shall, within ten days after the entry into force of a court order depriving a parent of parental rights, send a copy of the court order to the vital statistics office where the birth registration of the child is located and to the child care institution where the child resides.

§ 55. Consequences of deprivation of parental rights

(1) A person who has been deprived of parental rights loses all rights with respect to a child.

(2) A guardianship authority may permit a person who has been deprived of parental rights to visit with a child if this does not have a negative influence on the child.

(3) Deprivation of parental rights does not release a parent from the duty to provide maintenance for a child.

§ 56. Restoration of parental rights

(1) At the request of a person who has been deprived of parental rights, a court may restore parental rights with respect to a child if the person has improved his or her conduct, and desires and is capable of exercising parental rights as required.

(2) In hearing a matter for restoration of parental rights, the court shall include a guardianship authority for the purpose of hearing its opinion in the proceeding.

(3) Parental rights shall not be restored if a child is adopted.

(4) A court shall, within ten days after the entry into force of a court order restoring parental rights, send a copy of the court order to the vital statistics office where the birth registration of the child is located and to the child care institution where the child resides.

§ 57. Removal of child from step-parent or foster-parent

On the bases of and pursuant to procedure provided for in §§ 53 and 54 of this Act, a court may remove a child from a step-parent (§ 68 (2)) or a foster-parent (§ 68 (3)).

§ 58. Guarantee of interests of child

In hearing a dispute concerning a child, a guardianship authority or court shall proceed from the interests of the child, considering the wishes of a child who is at least ten years of age. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

(17.04.97 entered into force 19.05.97 - RT I 1997, 35, 538)

§ 59. Opinion of guardianship authority

In hearing a dispute concerning a child, a court shall, if necessary, include a guardianship authority for the purpose of hearing its opinion in the proceeding.

Chapter 9

Duty of Maintenance in Family

Division 1

Duty of Maintenance of Parents and Children

§ 60. Duty of parent to maintain child

(1) A parent is required to maintain his or her minor child and a child who has become an adult, needs assistance and is incapacitated for work.

(2) If a child attends basic school, upper secondary school or vocational school and continues to study therein upon becoming an adult, a parent is required to maintain the child during his or her studies.

§ 61. Support for child

(1) If a parent fails to perform the duty to provide maintenance to a child, a court shall, at the request of the other parent, guardian or guardianship authority, order support for the child to be paid to the parent who submitted the claim or to the guardian or person in whose interests the guardianship authority submitted the claim.

(2) Support for a child shall be specified as a monthly support payment based on the financial situation of each parent and the needs of the child.

(3) Upon a change in the financial situation of a parent or the needs of a child, a court may change the amount of support at the request of an interested person.

(4) The monthly support payment for one child shall not be less than half of the minimum monthly wage established by the Government of the Republic.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

(5) A court may reduce the amount of support to less than the amount specified in subsection (4) of this section if a parent has another child who would be less financially secure than the child receiving support if such amount were ordered.

(6) A court may refuse to order support or may reduce the amount thereof to less than the amount specified in subsection (4) of this section or terminate payment of support if:

- 1) a parent ordered to pay support is incapacitated for work, or
- 2) a child has sufficient income, or
- 3) other good reasons as established by the court become evident.

(7) If the circumstances specified in subsections (5) and (6) of this section cease to exist, a court may order support or an increase of support at the request of an entitled person.

(8) A court may, with good reason, release a man from whom filiation of a child has been established by a court (§ 42) from the duty to maintain the child.

(9) If a child resides with each parent, a court shall order support for a child from the parent who has the better financial situation.

§ 62. Support for child in child care institution

If a parent fails to perform the duty to provide maintenance to a child in a child care institution, a court shall, at the request of the child care institution or a guardianship authority, order support from the parent for the child to be paid to the child care institution where the child resides.

§ 63. Support for child who has become an adult

(1) A court shall order support from a parent for an adult specified in § 60 of this Act at the request of the adult based on the provisions of § 61 of this Act.

(2) If after ordering support from a parent for an adult the financial situation of the adult or the parent changes, a court may, at the request of either, change

the amount of support or terminate payment of support on the bases provided for in § 61 of this Act.

§ 64. Duty of child who has become an adult to maintain parent

(1) A child who has become an adult is required to maintain his or her parent who needs assistance and is incapacitated for work.

(2) If a child who has become an adult does not perform the duty specified in subsection (1) of this section, a court shall, at the request of the parent, order support from the child to the parent as a monthly support payment based on the financial situation of the child who has become an adult and of the parent, and on the needs of the parent.

(3) In ordering support, a court shall consider all children of a parent who have become adults regardless of whether the parent submits a claim for support against some or all of the children.

(4) A court may refuse to order support from a person specified in subsection (1) of this section if the parent evaded performance of parental duties.

(5) A child who has become an adult is released from the duty to provide maintenance for a parent if the parent is deprived of parental rights.

(6) If the financial situation of a child who has become an adult or of a parent changes after the ordering of support from the child who has become an adult to the parent who needs assistance and is incapacitated for work, a court may, at the request of either, change the amount of support or terminate payment of support. Payment of support may also be terminated if the basis provided for in subsection (1) of this section ceases to exist.

Division 2

Duty of Maintenance of Other Family Members

§ 65. Duty of grandparent to maintain grandchild

Grandparents whose financial situation so permits are required to maintain their minor grandchild or their adult grandchild who needs assistance and is incapacitated for work if the grandchild does not have parents, a spouse or a child who has become an adult or if it is not possible to obtain maintenance from these persons.

§ 66. Duty of grandchild to maintain grandparent

An adult grandchild whose financial situation so permits is required to maintain his or her grandparent who needs assistance and is incapacitated for work if the grandparent does not have a spouse or a child who has become an adult or if it is not possible to obtain maintenance from these persons.

§ 67. Duty of maintenance of brother and sister

An adult brother or sister whose financial situation so permits is required to maintain his or her minor brothers and sisters if they do not have parents or grandparents or if it is not possible to obtain maintenance from these persons.

§ 68. Maintenance of step-parent and foster-parent

(1) An adult stepchild or foster-child is required to maintain a step-parent or foster-parent who needs assistance and is incapacitated for work and who has raised and maintained him or her for at least ten years, if the step-parent or foster-parent does not have an adult child or spouse with capacity for work or if it is not possible to obtain maintenance from these persons.

(2) A step-parent is a person married to a parent of a child, who is not a parent of the child.

(3) A foster-parent is a person who actually raises a child but is not a parent or step-parent of the child.

§ 69. Support for other family members

(1) If a person specified in §§ 65-68 of this Act fails to perform the duty to provide maintenance for another family member a court shall, at the request of the family member, order support from the person as a monthly support payment based on the financial situation of each and the need for assistance.

(2) If after ordering support the financial situation of the payer or recipient of the support changes or the recipient's need for assistance changes, a court may, at the request of either, change the amount of support or terminate payment of support.

Division 3

Support Order and Seizure of Income

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 70. Procedure for support order

(1) If a person fails to perform the duty to provide maintenance, a court shall order support as of the filing of a claim for support.

(2) At the request of the plaintiff, a court may order support retroactively for up to one year before filing of the claim for support in the court if the obligated person failed to perform the duty to provide maintenance during the period and the circumstances specified in subsection 61 (6) of this Act did not exist.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

§ 71. Release from payment of arrears

At the request of a person paying support, a court may partially or fully release the person from payment of the arrears of support ordered by the court if the arrears arose due to illness of the person or upon other persuasive circumstances as established by the court and the financial situation of the person does not permit payment of the arrears.

§ 72. Disallowance of set-off and reclaim

(1) Support may not be used to set off a counterclaim of a debtor.

(2) Support paid may not be reclaimed except in the case where a court decision based on false information or forged documents presented by the plaintiff is recalled.

§ 72¹. Seizure of income of person who has placed his or her family in difficult economic situation

If a person places his or her family in a difficult economic situation as a result of dissipation or the use of alcoholic beverages or psychotropic substances, a court may, at the application of the spouse or a family member with respect to whom the person has failed to perform the duty to provide maintenance, order seizure of a claim for the payment of wages or a claim for other permanent income of the person and require the employer or the person obliged to pay permanent income to make the corresponding payments in the amount specified in the court judgment to the person who submitted the application.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

Chapter 10

Adoption

§ 73. Content of adoption

- (1) The rights and duties between parent and child are created between an adoptive parent and an adopted child by adoption.
- (2) Adoption is for an unspecified term and cannot be conditional.

§ 74. Child being adopted

- (1) A child may be adopted only in the interests of the child.
- (2) An adult shall not be adopted.

§ 75. Adoptive parent

- (1) A person at least twenty-five years of age who is capable of raising the adoptive child, caring for the child and maintaining the child may be an adoptive parent. A court may also permit a younger adult to be an adoptive parent.
- (2) The following shall not be adoptive parents:
 - 1) a person who has been deprived of parental rights or from whom a child has been removed without deprivation of parental rights;
 - 2) a person who has been relieved of the duty of guardian due to inadequate performance of duties;
 - 3) a person with restricted active legal capacity.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- (3) The same child may be adopted only by persons who are married to each other.

§ 76. Decision on adoption

- (1) A court decides an adoption on the basis of the application of a person wishing to adopt. In deciding an adoption, the court shall include a guardianship authority in the proceeding for the purpose of hearing its opinion.

(2) A guardianship authority shall, at the request of a court, collect and prepare the information necessary for deciding an adoption.

§ 77. Confidentiality of adoption

(1) A person who knows about an adoption shall maintain the confidentiality of the adoption.

(2) A person who violates the duty to maintain the confidentiality of adoption shall be held liable pursuant to law.

(3) The procedure for disclosure of adoption information shall be established by legislation.

§ 78. Consent of parents

(1) A child may be adopted with the written consent of the parents. A parent may give consent for adoption to a guardianship authority even if the adoptive parent is not identified.

(2) Parents may withdraw consent given for adoption until the adoption decision is made.

(3) A child may be adopted without the consent of the parents if they have been deprived of parental rights.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 79. Consent of child

(1) A child who is at least ten years of age may be adopted with his or her consent. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

(17.04.97 entered into force 19.05.97 - RT I 1997, 35, 538)

(2) A child may be adopted without his or her consent if the child lived in the family of the adoptive parent before the adoption and does not know that the adoptive parent is not his or her parent.

(17.04.97 entered into force 19.05.97 - RT I 1997, 35, 538)

§ 80. Consent of spouse of adoptive parent

(1) A married person may adopt only with the written consent of his or her spouse.

(2) Adoption may be effected without consent of the other spouse if the conjugal relations of the spouses have terminated and they live apart.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 81. Consent of guardian

A child under guardianship may be adopted only with the written consent of the guardian.

§ 82. Adoption by person not residing in Estonia

A person who does not reside in Estonia may adopt an Estonian citizen residing in Estonia only with the consent of the Minister of Social Affairs.

§ 83. Adoption order

(1) A child shall be deemed to be adopted as of the date of entry into force of the adoption judgment.

(2) Upon issue of an adoption order, a court shall decide the change of the given name and surname of the adoptive child (§ 85).

(3) A court shall, within one month after entry into force of an adoption judgment, send a copy of the court order to the vital statistics office where the birth registration of the child is located.

§ 84. Entry of adoptive parent in birth registration

The adoptive parent shall be entered as a parent in the birth registration of an adoptive child.

§ 85. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 86. Legal consequences of adoption

(1) An adopted child and his or her descendants shall be deemed to be equal with respect to his or her adoptive parents and their relatives, and the adoptive parents and their relatives shall be deemed to be equal with respect to the

adopted child and his or her descendants with regard to personal and proprietary rights and obligations.

(2) An adopted child loses personal and proprietary rights and is released from duties with respect to his or her parent and relatives of the parent.

(3) A parent loses personal and proprietary rights and is released from duties with respect to his or her child who is adopted and with respect to descendants of the adopted child.

(4) If a child is adopted by a man and the child has a mother who remains the mother of the child, or if a child is adopted by a woman and the child has a father who remains the father of the child, the rights and duties between the child and such parent and the relatives of the parent are preserved.

§ 87. Declaration of invalidity of adoption and deprivation of parental rights

(1) A court may declare an adoption invalid only if it becomes evident that the conditions provided for in §§ 74–76 and 78–82 of this Act have been violated or if the adoption was ostensible.

(2) A court may deprive an adoptive parent of parental rights on the bases provided for in § 54 of this Act or remove a child from an adoptive parent without deprivation of parental rights on the bases provided for in § 53 of this Act.

(3) In declaring an adoption invalid, deprivation of parental rights of an adoptive parent or removal of a child from an adoptive parent without deprivation of parental rights, a court shall include a guardianship authority in the proceeding for the purpose of hearing its opinion.

§ 88. Persons contesting adoption

(1) A person whose rights are violated by an adoption, or a guardianship authority may demand that an adoption be declared invalid.

(2) If an adoption was effected without consent of a parent or guardianship authority as prescribed by law, only the person without whose consent the adoption was effected may, on this basis, demand that the adoption be declared invalid.

(3) Deprivation of an adoptive parent of parental rights or removal of a child without deprivation of parental rights may be demanded by the parent of the child who retains parental rights upon adoption, the other adoptive parent or a guardianship authority.

§ 89. Declaration of invalidity of adoption of adopted child who has become an adult

The adoption of an adopted child who has become an adult may be declared invalid on the bases provided for in § 87 of this Act, only at the request of the adopted child and on the condition that his or her parents and adoptive parents agree with the declaration of invalidity of the adoption.

§ 90. Consequences of declaration of invalidity of adoption

(1) An adoption declared invalid is invalid from inception.

(2) In declaring an adoption invalid, the personal and proprietary rights and duties specified in subsections § 86 (2) and (3) of this Act shall be deemed to be not extinguished.

(3) A court shall, within ten days after the entry into force of a court order declaring an adoption invalid, send a copy of the court order to the vital statistics office where the birth registration of the child is located.

§ 91. Consequences of deprivation of parental rights of adoptive parent

(1) An adoptive parent who is deprived of parental rights loses all rights with respect to a child. Depriving an adoptive parent of parental rights does not release the parent from the duty to provide maintenance for a child except in the case where the parental rights and duties between the child and the parent are restored.

(2) Upon depriving an adoptive parent of parental rights, a child shall be removed from the adoptive parent.

(3) In depriving an adoptive parent of parental rights, a court shall, at the request of a parent and considering the wishes of a child who is at least ten years of age, decide whether to restore the rights and duties between the child and the parent and whether to give the child to the parent to raise. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

(17.04.97 entered into force 19.05.97 - RT I 1997, 35, 538)

(4) If parental rights are not restored, a guardianship authority shall arrange for care of the child.

(5) (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

(6) A court shall, within ten days after entry into force of the court order depriving an adoptive parent of parental rights, send a copy of the court order to the vital statistics office where the birth registration of the child is located.

(7) Once deprived, parental rights of an adoptive parent shall not be restored.

Part III

Guardianship and Curatorship

Chapter 11

Guardianship

§ 92. Content of guardianship

(1) Guardianship is established for the purpose of raising a child and for protection of his or her personal and proprietary rights and interests.

(2) Guardianship is established for a child whose parents are deceased, missing or with restricted active legal capacity, or are deprived of parental rights.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) Guardianship may also be established for a child who for other reasons is left without parental care.

(4) Guardianship is also established for the protection of proprietary and personal rights and interests of an adult with restricted active legal capacity.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(5) The spouse, relatives and relatives by marriage of a person in need of guardianship, judges, police officers, heads of medical institutions, officials of vital statistics offices, prosecutors and any other officials who have information concerning a person in need of guardianship are required to notify the guardianship authority according to the residence of the person in need of guardianship.

§ 93. Establishment and organisation of guardianship

(1) A court decides on establishment of guardianship on the application of a guardianship authority or of the person who is placed under guardianship.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) A guardianship authority collects and prepares the information necessary for establishment of guardianship.

(3) A guardianship authority arranges for guardianship.

§ 94. Location of establishment of guardianship

Guardianship is established according to the residence of the person in need of guardianship.

§ 95. Guardian

(1) Guardianship is exercised by a guardian appointed by a court. A guardianship authority proposes the appointment of a person as a guardian.

(2) A person may be appointed guardian only with the person's written consent.

(3) In selecting a guardian, the characteristics and capabilities of the person to perform the duties of guardian and the person's relations with the person for whom guardianship is established shall be taken into consideration.

(4) The wishes of a child who is at least ten years of age or of a person with restricted active legal capacity shall be considered in the appointment of a guardian. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

(17.04.97 entered into force 19.05.97 - RT I 1997, 35, 538)

(5) A guardianship authority performs the duties of a guardian until appointment of the guardian.

§ 96. Person not eligible to be guardian

The following persons shall not be guardians:

- 1) minors;
- 2) persons with restricted active legal capacity;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

3) persons who have been deprived of parental rights or from whom a child has been removed without deprivation of parental rights;

4) persons who have been relieved of the performance of duties of a guardian or curator;

5) persons who for some other reason are not capable of performing the duties of a guardian.

§ 97. Guardian of child

(1) A guardian is the legal representative of a child.

(2) A guardian is required to attend to the raising and maintenance of a child.

§ 98. Right of representation of guardian

(1) A guardian is the legal representative of the ward.

(2) A guardian is required to care for and maintain the ward and to act in the ward's interests.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 99. Restrictions on transactions

(1) Without prior approval of a guardianship authority, a guardian shall not:

1) transfer an immovable of a ward or encumber it with restricted real rights;

2) transfer a movable of a ward which is of special value to the ward;

3) give away a movable of a ward except for customary gifts;

4) pledge a movable of a ward;

(28.05.96 entered into force 08.06.96 - RT I 1996, 40, 773)

5) take a loan in the name of a ward or waive collection of a debt;

6) decline to accept a succession in the name of a ward.

(2) A guardian of a person with restricted active legal capacity shall not give consent to enter into the transactions specified in subsection (1) of this section without the prior approval of the guardianship authority.

(3) The provisions of subsections (1) and (2) of this section concerning a guardian also apply with respect to a parent and a child.

§ 100. Prohibited transactions

(1) A guardian shall not enter into a transaction with a ward except in cases where no civil obligations arise from the transaction for the ward.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) A guardian shall not enter into a transaction in the name of a ward with the guardian's spouse, descendants, ascendants, brothers or sisters.

(3) A guardian shall not represent a ward in disputes with the guardian or with the persons specified in subsection (2) of this section. In such case a guardianship authority shall represent the ward.

(4) The provisions of subsections (1)-(3) of this section concerning a guardian and a ward also apply with respect to a parent and a child.

§ 101. Report of guardian

(1) A guardian is required to report to the guardianship authority concerning performance of the guardian's duties.

(2) A guardian shall submit an annual written report concerning administration of a ward's property to the guardianship authority.

(3) The duties specified in subsections (1) and (2) of this section do not apply to parents.

§ 102. Termination of authorisation of guardian

(1) If a guardian fails to perform his or her functions or performs them inadequately, a court shall, at the request of a guardianship authority, terminate the authorisation of the guardian.

(2) In the interests of a ward, a guardianship authority may, upon submission of a claim specified in subsection (1) of this section, remove a guardian from performance of his or her functions until a court decides on termination of the authorisation of the guardian.

§ 103. Termination of guardianship

If prerequisites for the establishment of guardianship cease to exist, a guardian is required to submit an application to a court for termination of guardianship. The application may also be submitted by a guardianship authority.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 104. Termination of guardianship

Guardianship terminates upon:

- 1) death of a ward;
- 2) restoration of parental rights of the parents of a child ward;
- 3) adoption of a ward;
- 4) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)
- 5) a child ward becoming an adult.

Chapter 12

Curatorship

§ 105. Curatorship of person with active legal capacity

(1) Curatorship is established by a guardianship authority for an adult with active legal capacity who due to mental or physical disability needs assistance in the exercise of his or her rights and duties.

(2) Curatorship is exercised by a curator appointed by a guardianship authority. Curatorship is established and a curator is appointed with the consent of the person under curatorship.

(3) Curatorship is established for performance of an act or certain acts.

(4) A curator is not the legal representative of the person under curatorship.

§ 106. Termination of curatorship

A guardianship authority shall terminate a curatorship if so desired by the person under curatorship or if the basis for establishment of curatorship ceases to exist.

Part IV

Vital Statistics Registrations

Chapter 13

General Provisions

§ 107. Vital statistics registration

A vital statistics registration is a document prepared by a vital statistics office concerning a birth, death, contraction of marriage or divorce which is proof of the birth, death, contraction of marriage or divorce.

(15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 107¹. Vital statistics certificate

(1) A vital statistics certificate is a document which contains vital statistics registration information and proves the existence of a vital statistics registration.

(2) The following are vital statistics certificates:

1) birth certificates;

2) death certificates;

3) marriage certificates;

4) divorce certificates;

5) (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

(3) A vital statistics certificate is issued by a vital statistics office on the basis of a vital statistics registration. A certificate is issued to a person concerning whom it is prepared and to a representative of the person.

(4) A death certificate is issued to the spouse, relative or relative by marriage of the deceased.

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

§ 108. Vital statistics offices

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

(1) Vital statistics offices prepare vital statistics registrations and issue vital statistics certificates.

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

(1¹) For the purposes of this Act, the following are vital statistics offices:

1) rural municipality and city governments;

2) county governments;

3) representations of the Republic of Estonia;

4) the Ministry of Internal Affairs.

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

(2) Rural municipality governments register births and deaths. City governments register births and deaths if there is no county government in their administrative territory.

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

(3) County governments register births, deaths, marriages and divorces, amend, correct and cancel such registrations, restore missing vital statistics registrations, keep registration registers, and issue certificates, copies of vital statistics registrations and documentation.

(15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

(3¹) A consular officer may register births, deaths and marriages in accordance with the legislation of the receiving state if there is a justified need for the registration to be made.

(03.12.2003 entered into force 01.01.2004 - RT I 2003, 78, 527)

(4) The Ministry of Internal Affairs organises the storage of second copies of vital statistics registrations and enters notations in such registrations, issues birth certificates, death certificates and marriage certificates, copies of vital statistics registrations and documentation on the basis of parish registers, and instructs other vital statistics offices on issues related to preparation of vital statistics registrations and vital statistics certificates.

(12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

§ 109. Basis of and information in vital statistics registration entry

(1) A document proving the circumstance to be entered in a vital statistics registration and a document identifying the applicant shall be presented for a vital statistics registration entry.

(1¹) A document prepared in a foreign state which is the basis for a vital statistics registration entry shall be legalised by a certificate (*apostille*) specified in the first paragraph of Article 3 of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (RT II 2000, 27, 165; RT I 2002, 90, 521), unless otherwise provided by an international agreement.

(03.12.2003 entered into force 01.01.2004 - RT I 2003, 78, 527)

(2) For a vital statistics registration entry, a vital statistics office may require a person to submit information which is provided by law or legislation of general application issued on the basis thereof.

(31.05.2000 entered into force 01.08.2000 - RT I 2000, 50, 317; 25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

(3) A transcript of a vital statistics registration shall be issued to a court, the Prosecutor's Office, the police, a vital statistics office, a guardianship authority, a notary, an authorised processor of the Population Register, a bailiff, an official of the Citizenship and Migration Board, the adult concerning whom the vital statistics registration is prepared, and other persons if there is a legitimate interest.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

(4) Upon preparation of a vital statistics registration, an official of a vital statistics office shall verify the compliance of the data contained in the submitted documents with the data entered in the Population Register. A transcript of a vital statistics registration or data entered in the registration, a decision or record on amendment of a vital statistics registration or data entered in the decision or record shall be transferred to an authorised processor of the Population Register.

(31.05.2000 entered into force 01.08.2000 - RT I 2000, 50, 317)

(5) Information in a vital statistics registration shall be issued to an administrative authority if this is necessary for the administrative authority to perform functions directly imposed thereon by law or an international agreement.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

§ 109¹. Transfer of documents related to vital statistics to public archives

Parish registers, birth, marriage and death registers, family registers and vital statistics registrations shall be transferred to the public archives 110 years after their preparation.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

§ 110. Correction and amendment of entry

(1) Vital statistics offices shall correct errors in entries and amend entries if there is sufficient basis and no dispute among interested persons.

(1¹) A vital statistics registration may be amended or corrected in the cases provided for in this Act on the basis of a court judgment or a decision of a vital statistics office by which a vital statistics registration entry is amended.

(31.05.2000 entered into force 01.08.2000 - RT I 2000, 50, 317)

(2) If a vital statistics office refuses to correct or amend an entry or in the case of a dispute among interested persons, a court shall, at the request of an interested person, decide on correction or amendment of the entry.

§ 111. Cancellation of vital statistics registration

(1) Cancellation of an original vital statistics registration is decided by a court on the basis of the application of interested persons.

(2) A duplicate or restored vital statistics registration is cancelled by a vital statistics office if there is sufficient basis.

§ 112. Preparation, amendment, correction, restoration and cancellation of vital statistics registrations, and issue of vital statistics certificates

The procedure for preparation, amendment, correction, restoration and cancellation of vital statistics registrations and for the issue of vital statistics certificates, including the forms of vital statistics registrations and certificates and the technical description of vital statistics certificates, shall be established by a regulation of the Government of the Republic.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

§ 112¹. List of information to be submitted to vital statistics office

(1) The list of information to be submitted in an application for marriage, an application for divorce, an application for the correction or amendment of a vital statistics registration entry, an application for issue of a duplicate vital statistics certificate or a certificate concerning information entered in vital statistics registration, an application for ascertainment of the filiation of a child from his or her father, an application for issue of a marital status certificate and an application for issue of a certificate concerning the absence of circumstances hindering marriage shall be established by a regulation of the Government of the Republic.

(15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

(2) Subsection (1) of this section does not apply to information submitted to representations of the Republic of Estonia.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

§ 112². Forms of applications and certificates

(1) The forms of applications submitted to vital statistics offices and of certificates issued thereby shall be established by a regulation of the Minister of Internal Affairs.

(2) Subsection (1) of this section does not apply to applications submitted to representations of the Republic of Estonia.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

§ 113. (Repealed - 12.03.97 entered into force 19.04.97 - RT I 1997, 28, 422)

Chapter 14

Types of Vital Statistics Registrations

Division 1

Birth Registration

§ 114. Birth registration

(1) A birth shall be registered at a vital statistics office in Estonia if:

- 1) a child is born in Estonia,
- 2) the residence of a parent of a child is in Estonia or
- 3) a parent of a child is an Estonian citizen.

A vital statistics office of Estonia shall register a birth in the cases specified in clauses 1)-3) of this subsection unless the birth is registered in a foreign state.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(1¹) A birth shall be registered at the vital statistics office to which the corresponding application is submitted.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(2) A birth is registered on the basis of an application of a parent. If the parent is deceased or unable to submit an application, the application shall be submitted by a relative of the parent, the head of the medical institution where the child was born, or another person.

(3) A birth shall be registered within one month after the date of birth of the child; the birth of a foundling shall be registered within one month after the date of finding the child; and the birth of a stillborn child shall be registered within one month after the date of stillbirth.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(4) No entry concerning the parents is made in the birth registration of a foundling.

(15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

Division 2

Death Registration

§ 115. Death registration

(1) A death shall be registered at a vital statistics office in Estonia if:

- 1) a person dies in Estonia,
- 2) the last residence of a deceased person was in Estonia or
- 3) a deceased person was an Estonian citizen.

A vital statistics office of Estonia shall register a death in the cases specified in clauses 1)-3) of this subsection unless the death is registered in a foreign state.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(1¹) A death shall be registered at the vital statistics office to which the corresponding application is submitted.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(2) The vital statistics office of the location of the court registers a death on the basis of a court order establishing the fact of the death and declaring the person to be dead.

(3) The spouse, a relative, relative by marriage or another person who lived with the deceased person and, in the absence of such persons, the head of a medical institution, police officer or other official shall submit an application to a vital statistics office for death registration.

(4) A death shall be registered within three days after the date of death of the person or the finding of the deceased person.

§ 115¹. Nullity of death registration

(1) A death registration is void if it is proved that the person whose death was registered is alive or that a document which was the basis for the death registration was prepared regarding the wrong person or if it is clear that the death was registered without basis.

(2) A void death registration is invalid from inception.

(3) A vital statistics office may, by a decision, ascertain the nullity of a death registration for reasons specified in subsection (1) of this section at any time.

(4) The nullity of a death registration prepared without basis may be established by a vital statistics office which is competent to register deaths.

(5) This section does not apply if the fact of death is established by a court or the person is declared dead by a court.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

Division 3

Marriage Registration

§ 116. Marriage registration

Marriages are registered by the vital statistics office where the marriage is contracted.

§ 117. Application for marriage

(1) Prospective spouses shall submit a written application for marriage to a vital statistics office in person.

(2) Prospective spouses certify with their signatures on the application for marriage that they desire to marry and that there are no circumstances which hinder contraction of marriage and that they are aware of one another's state of health.

(3) A person who was previously married shall submit a document certifying termination of the marriage or annulment of the marriage.

§ 118. Application concerning circumstances hindering marriage

If a vital statistics office is notified of a circumstance hindering a contraction of marriage prior to the contraction of marriage, the contraction of marriage is postponed for up to one month for verification of the application.

Division 4

Divorce Registration

§ 119. Location of divorce registration

A divorce shall be registered at a vital statistics office where the marriage is divorced.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

§ 120. Divorce registration by agreement of spouses

(1) A divorce is registered in the presence of both spouses if the spouses divorce by agreement.

(2) A divorce may be registered without the presence of one spouse if the spouse cannot with good reason appear at a vital statistics office and the notarised consent of the spouse to the divorce is submitted without the presence of the spouse. A spouse staying in a foreign state may submit a written consent on which the signature of the petitioner is confirmed by a consular officer of the Republic of Estonia.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

§ 121. Divorce registration on application of spouse

(1) If a marriage is terminated by divorce on the basis of the application of one spouse, the divorce is registered by the vital statistics office in the presence of the spouse.

(2) In order to register a divorce, a spouse shall submit a copy of a court judgment concerning the establishment of the fact that the other spouse is missing.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) A vital statistics office shall notify the curator of the property of the missing spouse of the divorce.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 122. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

Division 5

Amendments to Birth Registration

§ 123. Amendments to birth registration in connection with adoption

(1) Amendments to a birth registration in connection with adoption are made by the vital statistics office where the birth registration is located.

(2) Amendments to the birth registration of a child in connection with adoption are made on the basis of the adoption judgment and the application and identification of the adoptive parent.

(3) If an adoptive parent does not submit the application specified in subsection (2) of this section within one month after adoption, a vital statistics office amends the birth registration of the child with an entry concerning the adoption on the basis of a court order.

(4) A vital statistics office issues a new birth certificate for a child on the basis of an amended birth registration.

§ 124. Cancellation of adoption information

(1) On the basis of a court order declaring an adoption invalid, a vital statistics office shall restore all information in the birth registration of the child which was in the birth registration before the adoption.

(2) On the basis of a court order depriving an adoptive parent of parental rights and restoring parental rights to a parent, a vital statistics office shall restore all information in the birth registration of the child which was in the birth registration before adoption.

§ 125. Amendments to birth registration in connection with filiation

(1) Amendments to a birth registration in connection with ascertainment of filiation from the father or establishment of filiation are made by the vital statistics office where the birth registration is located.

(2) An application for making amendments specified in subsection (1) of this section may be submitted to any vital statistics office.

(23.03.2005 entered into force 01.06.2005 - RT I 2005, 20, 124)

(3) After amendment of the birth registration of a child, a new birth certificate shall be issued.

Division 6

(Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

Part V

Implementing Provisions

§ 129. Entry into force of Act

The Family Law Act enters into force on 1 January 1995.

§ 130. Implementation of Act

(1) The Family Law Act has no retroactive force unless otherwise provided by the implementing provisions.

(2) The provisions of the Family Law Act apply to family law relationships created before the entry into force of this Act and in force on that date unless otherwise provided by the implementing provisions.

(3) The provisions of § 115¹ apply to all death registrations prepared pursuant to this Act.

(25.02.2004 entered into force 14.05.2004 - RT I 2004, 14, 92)

§ 130¹. Grant of right to perform functions of vital statistics office to minister of religion

(1) The Minister of Regional Affairs may grant the right to perform the functions of a vital statistics office which are related to the contraction of marriages to a minister of religion of a church, congregation or association of congregations who has received the appropriate training.

(24.03.2004 entered into force 08.04.2004 - RT I 2004, 22, 148)

(2) A minister of religion of a church, congregation or association of congregations who is granted the right to contract marriages by the Minister of Regional Affairs is equal to a vital statistics office upon performance of the functions

related to the contraction of marriages and the minister of religion has the right to register marriages and issue marriage certificates.

(24.03.2004 entered into force 08.04.2004 - RT I 2004, 22, 148)

(3) The conditions and procedure for the transfer of the functions of a vital statistics office which are related to the contraction of marriages to a minister of religion of a church, congregation or association of congregations and for the performance of the functions shall be established by a regulation of the Government of the Republic.

(4) The Ministry of Internal Affairs shall exercise supervision over the performance of functions related to the contraction of marriages by a minister of religion of a church, congregation or association of congregations.

(30.05.2001 entered into force 30.06.2001 - RT I 2001, 53, 307; 24.03.2004 entered into force 08.04.2004 - RT I 2004, 22, 148)

§ 131. Marital property contract

A marital property contract may be entered into with respect to property which is acquired before the entry into force of this Act.

§ 132. Division of property

Separate property is specified and joint property is divided according to the provisions of the Family Law Act even if the property was acquired before the entry into force of this Act.

§ 133. Liability for obligations of spouse

The provisions of § 20 of this Act also apply with respect to property which was procured before the entry into force of this Act.

§ 134. Date of termination of marriage

A marriage is terminated upon registration of a divorce at a vital statistics office if the court order granting the divorce was issued before the entry into force of this Act.

§ 135. Establishment of filiation from father

(1) After the entry into force of this Act, a court shall establish filiation from the father according to the provisions of § 42 of this Act even if the child was born or conceived before the entry into force of this Act.

(2) The provisions of subsection (1) of this section do not apply if a claim for establishment of paternal filiation was denied by a court order which entered into force before the entry into force of this Act.

§ 136. Alimony (support)

(1) Alimony (support) ordered by a court before the entry into force of this Act shall be collected in the amount specified in the court order.

(2) At the request of an interested person, a court may change the amount of alimony (support) and order support on the basis of the provisions of this Act as of the date of submission of the petition.

(3) The provisions of § 71 of this Act also apply with respect to arrears of alimony (support) created before the entry into force of this Act.

§ 137. Invalidity of marriage and adoption

Annulment of marriage and declaration of invalidity of adoption is effected according to the provisions of the Family Law Act even if the marriage is contracted or the adoption effected before the entry into force of this Act.

§ 138. Religious marriage

A religious marriage shall be deemed to be valid if it is contracted according to the law valid in Estonia at the time of contraction of the marriage.

§ 139. Lapse of action

(1) If the limitation period of an action was valid before the entry into force of this Act and it expired by the date of entry into force of this Act, the previously valid limitation period applies.

(2) If the limitation period of an action was valid before the entry into force of this Act and it did not expire by the date of entry into force of this Act and a longer limitation period is provided for in this Act, the longer limitation period applies.

(3) If lapse of an action was not applied pursuant to the law in force before the entry into force of this Act but it is prescribed by this Act, or the limitation period established by this Act is shorter than the previous limitation period, the limitation period provided for in this Act applies by calculating the beginning of the limitation period from the entry into force of this Act.

§ 140. (Repealed - 15.12.2004 entered into force 31.03.2005 - RT I 2005, 1, 1)

§ 141. Unlawfully expropriated property

Unlawfully expropriated property returned, replaced or the damages (compensation) payable for such property to a spouse during marriage is the separate property of the spouse unless otherwise provided by law.

§ 142. Repeal of earlier legislation

The following are repealed:

- 1) the Estonian SSR Act "Concerning Approval of the Estonian SSR Marriage and Family Code" (*ENSV Teataja*² 1969, 31, 316);
- 2) the Estonian SSR Marriage and Family Code (*ENSV Teataja* 1969, 31, Appendix; 1971, 35, 384; 1972, 40, 433; 1975, 44, 514; 1976, 21, 200; 1980, 12, 172; 1980, 31, 491; 1984, 31, 375; 1985, 17, 295; 1985, 31, 484; 1987, 4, 38; 1988, 6, 68; RT 1992, 11, 168);
- 3) the Republic of Estonia Supreme Council Presidium decree "Concerning Procedure for Implementation of "the Estonian SSR Marriage and Family Code"" (*ENSV Teataja* 1969, 50, 499; 1980, 12, 172).

¹ RT = *Riigi Teataja* = *State Gazette*

² *ENSV Teataja* = *ESSR Gazette*