

# Dutch Civil Code

## Book 3 Property law in general

### Title 3.11 Rights of action (legal actions)

#### Article 3:296 Legal action to claim specific performance

- **1.** Where a person is legally obliged towards another person to give, to do or not to do something, the court shall order him, upon a request or claim of the entitled person, to carry out this specific performance, unless something else results from law, the nature of the obligation or a juridical act.
- **2.** Where a person is legally obliged to perform something under an effective date or expiration date or under a condition precedent or subsequent, the court may order him to do so with observance of that time stipulation or condition.

#### Article 3:297 Consequence of a court decision to carry out a specific performance

If a performance is obtained through the enforcement of a judicial decision or another executory title, then this has the same legal effect as that of a voluntary performance of the obligation that exists according to that judicial decision or executory title.

#### Article 3:298 Conflicting debt-claims for the delivery of the same asset

When two or more creditors pursue conflicting debt-claims for the delivery of one and the same asset, then in their mutual relation the oldest debt-claim has priority, unless something else results from law, the nature of their debt-claims or from standards of reasonableness and fairness.

#### Article 3:299 A specific performance to do or not to do something

- **1.** When someone fails to do what he is legally obliged to do, the court may, upon a legal claim of the person towards whom this obligation exists, authorise this last person to effectuate himself what would have resulted from that obligation if it would have been performed properly.
- **2.** In the same way a person towards whom another person is legally obliged to refrain from doing something, may be authorised to undo what is performed in violation of that obligation.
- **3.** The costs necessary for the implementation of an authorisation as meant in the previous paragraphs, are chargeable to the person who did not observe his obligation. The judicial decision in which the authorisation is granted, may order as well the payment of these costs at display of certain documents mentioned to this end in the decision of the court.

#### Article 3:300 A specific performance to complete a juridical act

- **1.** Where someone is legally obliged towards another person to perform a juridical act, the court may order, upon a legal claim of the entitled person, that its judicial decision shall have the same force as a deed that should have been drawn up in accordance with all legal formalities by the person who is obliged to perform this juridical act or that a representative of this person, appointed by the court, shall perform this juridical act in his name, unless this is incompatible with the nature of the to be performed juridical act. When the court appoints a representative, it may order as well that the juridical act that has

to be performed by this representative needs its approval in advance.

- **2.** Where the defendant is legally obliged to draw up a deed with the plaintiff, the court may order that its judicial decision shall take the place of the deed or of a part of it.

### **Article 3:301 Registration of a judicial decision in the public registers**

- **1.** A judicial decision with regard to which the court has ruled that it will take the place of a deed necessary for the delivery of registered property or of a part of such a deed, may only be registered in the public registers for registered property if it has been served by a bailiff upon the person who is ordered to deliver the property and:

**a.** it has become final and binding or;

**b.** it is immediately enforceable (notwithstanding any appeal or other legal remedy) and a period of fourteen days, or so much shorter or longer as stipulated in the judicial decision, has passed since it was served upon the person who is ordered to deliver the property.

- **2.** A legal action to set aside a judgment by default, an appeal to a higher court or an appeal in cassation must be registered at the court's register meant in Article 433 of the Code of Civil Procedure within eight days after the legal remedy has been brought to court. Contrary to Article 143 of the Code of Civil Procedure the period for a legal action to set aside a judgment by default starts from the moment on which this judicial decision was served upon the defendant who did not appear in court, even when the decision was not handed over to him in person.

- **3.** If the effect of a judicial decision as meant in paragraph 1 is subject to a condition imposed by the court, then the keeper of the public registers for registered property shall refuse the registration of that decision if not also a notarial declaration or an authentic transcription (true copy) of such a declaration is submitted, from which shows that this condition is fulfilled.

### **Article 3:302 Declaratory judgment**

Upon a legal claim of a person who is immediately involved in a specific legal relationship, the court may give a declaratory decision about this legal relationship.

### **Article 3:303 Sufficient interest needed to start a legal action**

Without sufficient interest no one has a right of action.

### **Article 3:304 No separated legal action**

A right of action cannot be separated from the (property) right it serves to protect.

### **Article 3:305 Applicability of the previous statutory provisions to arbitration**

The powers granted to the court under the preceding Articles of this Title apply as well to arbitrators, unless parties have agreed otherwise.

### **Article 3:305a Collective actions ( 'Class actions' )**

- **1.** A foundation or association with full legal capacity that, according to its articles of association, has the objection to protect specific interests, may bring to court a legal claim that intends to protect similar interests of other persons.

- **2.** A legal person filing a claim as meant in paragraph 1 is inadmissible if he, in the given circumstances, has made insufficient attempts to reach a settlement over its claim through consultations with the defendant. A period of two weeks after the defendant has received a request for such

consultations, indicating what is claimed, shall in any event be sufficient to this end.

- **3.** A legal claim as meant in paragraph 1 may be brought to court in order to force the defendant to disclose the judicial decision to the public, in a way as set by court and at the costs of the persons as pointed out by the court. It cannot be filed in order to obtain compensatory damages.
- **4.** A legal action as meant in paragraph 1 cannot be based on specific behaviour as far as the person who is harmed by this behaviour opposes to this.
- **5.** A judicial decision has no effect with respect to a person whose interests are protected by the legal action, but who has made clear that he does not want to be affected by this decision, unless the nature of the judicial decision brings along that it is not possible to exclude this specific person from its effect.

#### **Article 3:305b Legal persons under public law**

- **1.** A legal person under public law as meant in Article 2:1 of the Civil Code that is entrusted to protect specific interests may bring to court a legal claim that intends to protect similar interests of other persons.
- **2.** Paragraph 2 up to and including 5 of Article 3:305a apply accordingly to such legal persons under public law.

#### **Article 3:305c Cross-border class actions**

- **1.** An organisation or public body with its seat outside the Netherlands, that is put on the list referred to in Article 4 paragraph 3 of Directive no. 98/27/EG of the European Parliament and the Council of the European Union of 19 May 1998 on injunctions for the protection of consumers' interests (PbEG L 166), may bring to a Dutch court a legal claim which intends to protect similar interests of other persons who have their habitual residence in the country where the organisation or public body has its seat, insofar that organisation protects such interests pursuant to its objective or, where it concerns a public body, this public body is entrusted with the protection of such interests.
- **2.** Paragraphs 2 up to and including 5 of Article 3:305a apply accordingly to such an organisation or public body.
- **3.** A foundation or association with full legal capacity with its seat within the Netherlands, that under its articles of association has the objective to protect the interests of end-users of goods or services which are not intended to be used in a professional practice or business, may - with the purpose of being put on the list as meant in paragraph 1 - request the Minister of Justice of the Netherlands to notify the Commission of the European Communities that it may bring a legal claim to court in order to protect these interests. In such a situation the Minister of Justice also reports to the Commission the name and objective of the foundation or association.

#### **Article 3:305d Specific condemnations by the Court of Appeal at The Hague**

- **1.** The Court of Appeal at The Hague may upon the request of:
  - a.** the Consumer Authority;
  - b.** the Authority for the Financial Markets, or
  - c.** a foundation or association with full legal capacity that under its articles of association has the objective to protect similar interests of other persons,order that someone who, according to Article 1.1 under point (k) of the Act on the Compliance with Rules for the Protection of Consumers, is in violation of the provisions in component (a) of the appendix to that Act, stops making this offence (prohibitory injunction).
- **2.** Upon the request of an organisation or legal person referred to in paragraph 1 under point (a), (b) or (c), the Court of Appeal may also order that a code of conduct, which appears to be encouraging a violation of the provisions of Article 6:193a up to and including 6:193i of the Civil Code, is changed by

the one who has issued this code of conduct as meant in Article 6:193a under point (i) of the Civil Code.

- **3.** In addition, the Court of Appeal may be requested to condemn someone who violates one of the provisions of Article 6:193a up to and including 6:193i of the Civil Code or someone who has issued a code of conduct that encourages the violation of the provisions of these Articles, to publish or disclose the judicial decision meant in paragraph 1 or 2. In case of a misleading trade practice as referred to in the provisions of Article 6:193c up to and including 6:193g of the Civil Code, the Court of Appeal may, upon request, also condemn the trader to rectify the information. The publication or rectification must be done in the way as set by the Court of Appeal and at the costs of the party or parties as pointed out by the Court of Appeal.

- **4.** If a foundation or an association with full legal capacity that under its articles of association has the objective to protect collective interests of persons, lodges an application as meant in paragraph 1, 2 or 3, then Article 3:305a paragraph 2 shall apply accordingly.

- **5.** The Court of Appeal shall immediately take such an application in consideration.

- **6.** Disputes concerning the enforcement of injunctions as meant in paragraph 1, 2 and 3, as well as of the injunction to pay a penalty payment, if it has been fined, are settled exclusively by the Court of Appeal at The Hague.

### **Article 3:306 Liberative prescription**

Rights of action become prescribed on the expiry of twenty years, unless the law provides otherwise.

### **Article 3:307 Prescription of a right of action to claim performance of a contractual obligation**

- **1.** A right of action to claim performance of a contractual obligation to give or to do something becomes prescribed on the expiry of five years from the day following the one on which the debt-claim has become due and demandable (exigible).

- **2.** Where it concerns an obligation to perform something at an indefinite moment, the period referred to in paragraph 1 runs from the day following the one on which the creditor has notified the debtor that he demands performance, while the right of action meant in paragraph 1 will in any event become prescribed on the expiry of twenty years from the day following the one on which the debt-claim became due and demandable (exigible) for the first time, if need be after a termination by the creditor.

### **Article 3:308 Prescription of debt-claims to obtain periodic performances**

A right of action to claim the payment of interest on a sum of money, annuities, rent, lease payments, dividends and, in addition, everything that must be paid annually or in shorter instalments, becomes prescribed on the expiry of five years from the day following the one on which the debt-claim has become due and demandable (exigible), this to be determined for each individual instalment separately.

### **Article 3:309 Prescription of debt-claims derived from an undue performance**

A right of action to claim the undoing (reversal) of an undue performance becomes prescribed on the expiry of five years from the day following the one on which the creditor has become aware of both the existence of his debt-claim and the identity of the recipient, and in any event twenty years from the day on which the debt-claim came into existence.

### **Article 3:310 Prescription of debt-claims for damages or a contractual penalty**

- **1.** A right of action to claim damages or a contractual penalty becomes prescribed on the expiry of five years from the day following the one on which the injured person has become aware of both the inflicted damage or the fact that the contractual penalty has become due and demandable and the identity of the

person who is liable for this damage or contractual penalty, and in any event twenty years from the day on which the event occurred that caused the damage or that made the contractual penalty become due and demandable (exigible).

- **2.** When the inflicted damage is caused by air, water or soil pollution, by the realisation of a danger as meant in Article 6:175 of the Civil Code or by ground movements as meant in Article 6:177, first paragraph, under point (b) of the Civil Code, then - contrary to what is stated at the end of paragraph 1 - the right of action to claim damages becomes prescribed on the expiry of thirty years from the day on which the event occurred that caused the damage.

- **3.** For the purpose of paragraph 2 an 'event' is understood as a suddenly occurring fact, a continuously occurring fact or a consecution of facts arising from the same cause. If the event forms a continuously occurring fact, then the period of thirty years meant in paragraph 2 starts to run after this fact has stopped to occur. If the event forms a consecution of facts arising from the same cause, then this period starts to run after the last fact in line has occurred.

- **4.** If the event that caused the damage constitutes a criminal offence to which the Dutch Penal Code is applicable, the right of action to claim damages against the person who committed the criminal offence shall not become prescribed as long as the penal action has not ceased to exist due to its prescription or the death of the liable person.

- **5.** Contrary to paragraph 1 and 2 a right of action to claim damages on account of an injury or death becomes prescribed on the expiry of five years from the day following the one on which the injured person becomes aware of both the damage and the identity of the person who is liable for it. Where the injured person was a minor on the day on which he became aware of both the damage and the identity of the person liable for it, the right of action shall only become prescribed on the expiry of five years from the day following the one on which he reached the age of legal majority.

### **Article 3:310a Prescription of claims for the return of cultural objects**

- **1.** A right of action to claim the return of a movable thing which under the national law of a Member State of the European Union or of another State, being a party to the Agreement on the European Economic Area, is a cultural object as defined in Article 1, under (1) of the Directive, referred to in Article 3:86a, and which is claimed back by one of these States on the basis that it has been removed unlawfully from its territory, becomes prescribed on the expiry of one year as of the day following the one on which that State has obtained knowledge of both the place where the object itself is situated and the identity of its possessor or holder, and in any event thirty years from the day following the one on which the object was removed from the territory of that State.

- **2.** The last period is seventy-five years in case of an object which forms a part of a public collection as defined in Article 1, under (1), of the Directive, referred to in Article 3:86a, and of religious objects as defined in the Directive in the Member States of the European Union or in the other States that are a party to the Agreement on the European Economic Area, where these are subject under national law to special protecting measures.

### **Article 3:310b Prescription of claims for reclaiming objects of national heritage**

- **1.** A right of action to claim the return of a movable thing which under the Act on the Conservation of Cultural Heritage has the status of a protected object or which forms a part of a public collection or is put on an inventory list as meant in Article 14a, paragraph 2 of that Act and of which the owner has lost possession after the moment on which it was classified as a protected object or during the time that it formed a part of a public collection or an inventory as mentioned before, becomes prescribed on the expiry of five years from the day following the one on which both, the place where the object itself is situated and the identity of the possessor or holder have become known, and in any event thirty years from the day following the one on which a not-entitled person has become the possessor of the object.

- **2.** The right of action of the owner of a movable thing cannot become prescribed pursuant to paragraph 1 as long as a State still has a right of action to claim the return of that movable thing on the basis that it has been removed unlawfully from the territory of the Netherlands, which claim may be brought to a court of another Member State of the European Union or of another State that is a party to the Agreement on the European Economic Area.

### **Article 3:310c Prescription of the right of action to claim the return of cultural objects in the meaning of the 1970 UNESCO Convention**

- **1.** A legal claim (right of action) for the return of a movable thing (cultural object), based on Article 4 of the of the Implementation Act for the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, becomes prescribed on the expiry of five years after the day following the one on which both, the property (cultural object) is located and the identity of the possessor or holder has become known, and in any case on the expiry of thirty years after the day following the one on which the thing (cultural object) was brought outside the territory of the Contracting State from which it originated.

- **2.** The last prescription period is seventy-five years in the event of things (cultural objects) that form a part of public collections, listed on the inventory lists of museums, archives and permanent collections of libraries, or of the inventory of a religious institution. For the purpose of the present paragraph 'public collection' means a collection owned by a Contracting State, a local or regional authority of a Contracting State or an agency or institution on the territory of a Contracting State, provided that this agency or institution is regarded under the law of that Contracting State as a public entity and that it is owned or largely funded by that Contracting State or by local or regional authorities of that State.

### **Article 3:311 Prescription of a right to rescind a contract or to claim the correction or undoing (reversal) of a performance**

- **1.** A right of action to rescind an agreement on the basis of a non-performance and a right of action to claim necessary adjustments to correct the failures in a performance becomes prescribed on the expiry of five years from the day following the one on which the creditor becomes aware of the failure and, in any event, twenty years after the moment on which the failure occurred.

- **2.** A right of action to claim on the basis of Article 6:271 of the Civil Code the undoing (reversal) of an already carried out performance becomes prescribed on the expiry of five years from the day following the one on which the agreement, that formed the legal basis for this performance, was rescinded.

### **Article 3:312 Prescription of subsidiary rights that are based on a non-performance**

Provided that the prescription period is not interrupted or extended, a right of action that is based on a failure in performance as well as a right of action to claim the payment of statutory or contractual interest or the handing over of fruits (benefits), becomes prescribed no later than the right of action to claim the principal performance itself or, if the failure is capable of correction, no later than the right of action to claim correction of this failure.

### **Article 3:313 Start of the prescription period for a right of action to claim that something is given or done**

The prescription period for a right of action to claim the performance of an obligation to give or to do something starts to run from the day following the one on which immediate performance may be claimed, unless the law provides otherwise.

### **Article 3:314 Prescription of claims to remove an unlawful situation or to end someone's possession**

- **1.** The prescription period for a right of action to remove an unlawful situation starts to run as of the day following the one on which the immediate ending of that situation may be claimed.
- **2.** The prescription period for a right of action to terminate the possession of a non-proprietor starts to run from the day following the one on which a non-proprietor has become the possessor or on which the immediate termination could be claimed of the situation of which his possession forms a continuation.

### **Article 3:315 Prescription of claims to an inheritance**

The prescription period for a right of action to claim an inheritance starts to run from the day following the one of the death of the deceased.

### **Article 3:316 Interruption of a prescription by starting a legal action**

- **1.** The prescription period of a right of action is interrupted as soon as a legal claim is brought to court by the person entitled to do so as well as by any other legal action from this person instituted in the required form.
- **2.** When a filed legal claim is rejected by the court, the prescription period will only have been interrupted if, within six months after the legal proceedings have ended due to a final and binding decision or because of another reason for its ending, a new legal claim is filed which is awarded after all by the court. If a legal action is withdrawn, then it has not interrupted the prescription period.
- **3.** The prescription period is also interrupted by an act to obtain a binding third-party ruling, provided that this act is reported with convenient speed to the opposite party and that it results in a binding advice. When no binding advice is obtained, paragraph 2 applies accordingly.

### **Article 3:317 Interruption of a prescription by a letter of formal notice**

- **1.** The prescription period for a right of action to claim the performance of an obligation is interrupted by a letter of formal notice in which performance is demanded or by a written announcement in which the creditor unambiguously reserves his right to claim performance.
- **2.** The prescription period of other rights of action is interrupted by a letter of formal notice, provided that it is followed within six months by a legal action as defined in the previous Article.

### **Article 3:318 Interruption because of an acknowledgement of the other person's right**

The acknowledgement of a property right that is covered by a right of action interrupts the prescription of that right of action towards the person who has acknowledged this property right.

### **Article 3:319 Start of a new prescription period**

- **1.** When a prescription period for a right of action is interrupted in another way than by the start of a legal action that ultimately has been awarded by the court, then a new prescription period starts to run as of the day following the day of interruption. When a binding third-party ruling has resulted in a binding advice, then the new prescription period starts to run as of the day following the one on which the binding advice has been given to the parties.
- **2.** The new prescription period has the same duration as the original, yet not longer than five years. Nevertheless the prescription will never set in earlier than the moment on which the original period would have expired without interruption.



### **Article 3:320 Extension of a running prescription period**

When a prescription period would expire during the existence of a ground for its extension or within six months after such a ground has ceased to exist, then the prescription period continues to run until six months have passed since the ending of the involved ground for extension.

### **Article 3:321 Grounds for extension of a prescription period**

- **1.** A ground for extension of a prescription period exists:
  - a.** between not legally separated spouses;
  - b.** between a legal representative and the represented person who misses (full) legal capacity;
  - c.** between a legal administrator of property under (fiduciary) administration and the person entitled to that property, to the point of claims concerning the administration of that property;
  - d.** between legal persons and their directors;
  - e.** between an heir and the estate of a deceased that is accepted by this heir under the condition that the value of the assets of the estate will exceed its debts;
  - f.** between the creditor and a debtor who deliberately conceals the existence of the debt or the fact that it has become due and demandable;
  - g.** between partners in a registered partnership.
- **2.** The grounds for extension mentioned under point (b) and (c) of the previous paragraph continue to last until the legal representative or legal administrator has rendered his final accounts.

### **Article 3:322 Appeal to a prescription of a right of action**

- **1.** The court is not allowed to apply of its own motion the defence that a right of action has become prescribed.
- **2.** The right to appeal to a prescription may be renounced (waived) by a declaration of the person who is entitled to appeal to it.
- **3.** Before the prescription is completed, it is not possible to renounce (waiver) the right to appeal to it.

### **Article 3:323 Effects of a prescription on a pledge and mortgage**

- **1.** When the prescription of a right of action to claim the performance of an obligation is completed, the pledge or mortgage that is established as security for this obligation ceases to exist.
- **2.** However, the prescription does not prevent the pledgee from exercising his rights based on the pledge against the pledged property if this is a movable thing or a debt-claim to order or bearer, provided that this thing or the negotiable document payable to order or to bearer was already brought under control of the pledgee or of a third party appointed by him before the prescription was completed.
- **3.** The right of action to claim the performance of an obligation which is secured by a mortgage, shall not become prescribed before twenty years have expired since the day following the one on which the mortgage was established as security for the obligation.

### **Article 3:324 Prescription of a right to enforce a judicial or arbitral decision**

- **1.** The right to enforce a judicial or arbitral decision becomes prescribed on the expiry of twenty years as of the day following the one of the decision or, if for its enforcement certain conditions have to be fulfilled which are not dependent of the will of the one who has obtained the decision, as of the day following the one on which these conditions are fulfilled.
- **2.** If one of the parties, before the expiry of the prescription period, institutes a legal remedy or legal action to remove a judicial or arbitral decision that still has to be enforced, then the prescription period will start to run as of the day following the one on which the legal proceedings about this question have ended.



- **3.** The prescription period is five years with regard to what pursuant to the judicial or arbitral decision has to be performed within one year or a shorter period.
- **4.** Except in case of an interruption or an extension of the prescription period, the prescription of interests, contractual penalties, non-compliance fees and other subsidiary payment orders, imposed by a judicial or arbitral decision, shall set in no later than the prescription of the right to enforce the principal decision itself.

**Article 3:325 Application of the previous statutory provisions to the prescription of judicial decisions**

- **1.** Article 3:319 up to and including 3:323 apply accordingly to the prescription referred to in the pervious Article.
- **2.** The prescription referred to in the previous Article is interrupted:
  - a.** when the judicial or arbitral decision or the letter of formal notice has been served by a bailiff upon the opposite party;
  - b.** by an acknowledgement of the legal duty that is imposed by the judicial or arbitral decision;
  - c.** by any act of enforcement, provided that the opposite party has been notified of it within the period set by law or, if such a rule of law does not exist, with convenient speed.

**Article 3:326 Applicability of Title 3.11 to legal relationships outside the field of property law**

The provisions of the present Title apply accordingly outside the field of property law as far as the nature of the involved legal relationship does not oppose to this.

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