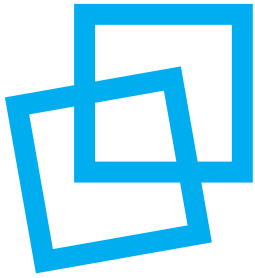


# New Co-owner's Guide



**RGCCQ**

**REGROUPEMENT  
DES GESTIONNAIRES  
ET COPROPRIÉTAIRES  
DU QUÉBEC**



## Foreword

Each year, several owners decide to purchase a condominium unit. In doing so, they choose to take part in the lifestyle of a micro-society. This lifestyle has several advantages, but also certain regulations that ensure the safeguard of each individual's enjoyment rights.

This guide will help you understand the difference between the life of an owner and the life of a co-owner. It contains several definitions derived from the book *Dictionnaire québécois de la copropriété* (Joli-Coeur, 2018) and draws on the expertise of our partners Condolégal, De Grandpré JoliCoeur, and Papineau Avocats (now LJT-PAPINEAU INC.).

Our 2020 update takes into account the legislative changes brought about by Bill 16, adopted on December 5, 2019 and whose provisions have for the most part come into force on January 10th, 2020.

If you have any questions, do not hesitate to contact the Regroupement des gestionnaires et copropriétaires du Québec. We can put you in contact with our different partners.

We hope that you enjoy your reading!

### Notice

The information in this guide constitutes a source of information based on the legislation available online on its date of publication. The information published in this guide is for informational purposes only and does not constitute a legal advice. If you wish to obtain a legal opinion, you must contact a lawyer.

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## What is a co-ownership?

### What is a syndicate of co-ownership?

By definition, a syndicate of co-owners (also known as a syndicate of co-ownership)<sup>1</sup> is a legal person representing the collectivity of the co-owners of an immovable subject to the divided co-ownership regime governed by the Civil Code of Quebec (CcQ).

Its purposes are: the preservation of the building, the maintenance and administration of the common portions, the safeguard of the rights pertaining to the building (or the co-ownership), and all forms of business in the common interest (Article 1039 of the CcQ). The syndicate of co-owners is the legal representative of the co-ownership. It is independent of its members (the general meeting of co-owners and the board of directors). Its actions are, in principle, its own.

It is considered by the tax authorities of Quebec and Canada as being respectively an enterprise (under the *Quebec Taxation Act*) and a corporation entitled to the status of a non-profit organization (under the *Income Tax Act* of Canada). It is required to file an annual tax return at both the provincial and federal levels. This declaration must be filed within six months of the end of its fiscal year. The syndicate must also complete an annual update at the *Registraire des entreprises du Québec*, otherwise it is subject to several penalties, including the cancellation of its registration status.

The syndicate of co-owners is neither the owner of the building nor the owner of the common portions (the latter are the undivided property of all the co-owners, proportional to each one's share).

#### Note

The syndicate's absolute duty is to ensure the conservation of the common portions. Its civil liability may be incurred when a construction or design defect causes a prejudice to co-owners, or to third parties, or if the syndicate has failed to adequately maintain these portions or to correctly carry out its obligations (i.e.: not enforcing the declaration of co-ownership or allowing co-owners to undertake irregular work).

The syndicate of co-owners is made up of two decision-making bodies, namely the board of directors and the general meeting of co-owners. The powers and responsibilities of these two entities are determined by law and by the declaration of co-ownership most often in the first section designated as the *Constitutive Act*.

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<sup>1</sup> You can obtain a definition of the terms used in co-ownerships via several glossaries online.

## **Board of directors**

The board of directors (composed of one or more directors) is the body responsible for managing the affairs of the syndicate and exercising all the powers necessary for the execution of its duties. These powers are generally listed, in part, in the first section of the Declaration of co-ownership (*Constitutive Act*). The board's primary duties are to ensure the conservation and the maintenance of the building, and that the co-owners, tenants or occupants of the building respect the declaration of co-ownership and its by-laws. Its roles and responsibilities are constant and are carried out regularly.

### **Note**

If you wish to meet the director(s) of your co-ownership, you can contact them and schedule an informal meeting. This meeting can be an opportunity for you to clarify certain by-laws and/or to get involved in a project in your co-ownership.

## **The general meeting of co-owners**

The general meeting of co-owners is the decision-making body that brings together the whole of the co-owners. It examines the questions which interest all the co-owners. It is notably consulted on, but not asked to vote upon, the adoption of the budget forecast prepared by the Board of directors, and is empowered to take certain decisions which relate to the co-ownership (for example, electing the board members and making amendments to the declaration of co-ownership). It exercises its powers within the framework of four types of general meetings: the Annual General Meeting (AGM), the Special General Meeting (SGM), the Special Transitional General Meeting (STGM) and the Make-up General Meeting (MGM).

The Annual General Meeting (AGM) is the most common type of meeting. It is convened once a year, usually within six months of the end of the fiscal year.<sup>2</sup> During this meeting, the board of directors renders an account of its administration and presents the balance sheet, the financial statements, the budget forecast. The general meeting then proceeds to the election of the new board members. It is possible that other matters, such as amendments to the by-laws, be addressed.

The Special General Meeting (SGM) occurs between two Annual General Meetings. It is convened during an emergency or when a vote is required by the general meeting.

The Special Transitional General Meeting (STGM) marks the end of the provisional administration. It is during this meeting that the co-owners will elect their first board of directors.

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<sup>2</sup> Please note that certain declarations of co-ownership reduce this period to 90 days, while others do not provide any specific delay at all.

Finally, the Make-up General Meeting (MGM) is convened following the adjournment of a previous meeting for which the agenda was not exhausted. This generally occurs when this previous meeting failed to reach a quorum.

Each co-owner present or represented at the meeting of the co-owners holds a certain number of votes. Their number of votes is established according to the relative value of their fraction (i.e.: their private portion and, sometimes, even their storage units or parking spaces if these are identified as such). To verify the number of votes you hold, please review the table of relative values which appears in the *Constituting Act* of your declaration of co-ownership. If there are more multiple owners of the same private portion, the syndicate needs to divide the number of votes belonging to each co-owner according to their respective shares, which will generally mean in equal parts, unless stated otherwise in the deed of sale.

### **Note**

The relative value establishes the share of the property rights of each co-owner in the common portions, their contribution to the common expenses and the number of votes associated with their private portion.

In some cases, the CcQ provides adjustments to the number of votes. For instance, if you own more than one unit within the same co-ownership, your number of votes could be reduced in certain cases, notably in smaller co-ownerships.

## **How to distinguish between the common portions, private portions and common portions for restricted use?**

Divided co-ownerships separate the building into private portions intended for the exclusive use of a co-owner, and into common portions intended for all the co-owners, or for some of them, to enjoy.

### **Private portions**

This is the fraction(s) of the building you own and of which you have exclusive ownership. They are described in the declaration of co-ownership in the section dedicated to the *Description of the fractions*. These portions are materially identifiable since they have their own cadastral designation. They are usually dwellings, parking spaces or fractions of the land (especially the case for semi-detached buildings), and sometimes commercial or office spaces in a mixed-use co-ownership.

## **Common portions**

Common portions are the parts of the building or land which are not privately owned. They undividedly belong to the collectivity of the co-owners. By purchasing a private portion, you acquire a share (undivided property rights) in the common portions which you cannot dispose of unless you sell your private portion. These common areas are described in the declaration of co-ownership in the section entitled *Description of the fractions*.

## **Common portions for restricted use**

Common portions for restricted use are common portions that have the particularity of being for the exclusive use of certain co-owners, or one co-owner. Article 1064 of the CcQ describes the specific laws governing these portions, particularly those pertaining to the distribution of charges. The common portions for restricted use are generally defined in the declaration of co-ownership. These parts are subject to allocation by the developer in their capacity as provisional administrator, or by the syndicate's board of directors. Frequently encountered examples of these include: balconies, passageways, patios, terraces, and sometimes the windows of a private unit.

### **Note**

Usually, co-owners who have exclusive use of certain common portions must pay for their maintenance and replacement costs. The declaration of co-ownership may, however, provide for a different distribution with regards to major repairs and the replacement cost of these portions.

## **What are the contributions that you must pay?**

In addition to the costs you have paid for the purchase of your private portion, you must also pay your part of the annual costs for the management and maintenance of the building and the syndicate of co-ownership. For more information on payment procedures, you can examine your declaration of co-ownership or contact your board of directors.

### **Note**

From the moment the sale is made, the unpaid common expenses are transferred to the new buyer who is then held accountable of their settlement. This transfer of debts is explained in article 1069 of the CcQ. Be careful, the notary's responsibility may be incurred if proper verifications have not been made prior to your purchase, or if you have not been informed of the debts that you must assume by purchasing your unit!

Here are the usual contributions you need to consider.

### **General common expenses and special assessments**

As a co-owner, you will be required to pay your share of the common expenses (commonly known as “condo fees”). The common expenses pay for the administration, maintenance, replacement, improvement or transformation of the common portions. Your share of these contributions is calculated in function of the relative value of your private portion.

There are also particular common expenses which relate to the common areas for restricted use. Unless your declaration of co-ownership states otherwise, only the co-owners who make use of a common portion for restricted use are required to pay for their minor maintenance, and costs of repair.

Finally, it is possible for the syndicate of co-owners to occasionally issue a special assessment. This occurs when expenses which are not generally foreseen in the budget forecast occur. This type of fundraising is often linked to work that the syndicate must undertake without being able to use the reserve fund (due to the nature of the work).

### **Common expenses relating to the contingency fund**

You must also pay the common expenses relating to the contingency fund. The contingency fund provides for major repairs and the replacement of the common portions (including those that are for restricted use). The amount you must pay will be based upon the relative value of your fraction. However, article 1072 CcQ states that the rights of any co-owner in the common portions for restricted use may be taken into account when fixing the contribution.. In other words, it is possible that your declaration of co-ownership has a by-law that states that you alone must pay for the costs of replacing a common portion for restricted use. In this case, you will be responsible for the total amount of the replacement costs and repairs.

### **Common expenses relating to the self-insurance fund**

This fund is reserved for the payment of the deductibles resulting from a syndicate of co-ownership’s insurance claim. The amount required in this fund is established according to the deductibles. The exact requirements for this fund are set by government regulation. Each co-owner contributes to the self-insurance fund in proportion to the relative value of their fraction.



## **Your role in the community of your co-ownership**

The simple act of purchasing a private portion (“condominium”) in a divided co-ownership makes you one of the syndicate’s members. As a syndicate member, you have certain rights and responsibilities. A few are outlined below:

### **Property rights**

As a co-owner, you have a right of ownership on the private portion you purchased. These rights differ from your rights in the common portions. Having a property right in a private portion gives you three rights: the right of use and enjoyment (reside in and occupy your unit), the right to collect the fruits and revenues from your unit (collect rent), and the power to dispose of your unit fully and freely (sell your unit, mortgage it, or even have some work done<sup>3</sup>). However, your property rights are subject to regulations or limitations found within your declaration of co-ownership. For example, your declaration of co-ownership may limit the right to exercise a professional activity in your unit. It can also state rental conditions.

### **Voting rights at the meeting of co-owners**

As a co-owner, you have the power to exercise your right to vote at a meeting of the co-owners. If you cannot be present, you have the right to issue a written power of attorney (proxy) to a third party of your choice (it may be a person who is not a co-owner). Remember that if more than one person owns your unit, each co-owner owns a fraction of the number of votes which are generally divided equally, unless otherwise stated in the deed of sale. If one of these co-owners is absent, the other recovers their votes unless a proxy is written to state otherwise (art. 1090 CcQ).

#### **Note**

Be careful, according to article 1094 of the CcQ, your right to vote is suspended if you are more than three months late on the settlement of your common expenses. As a result, you will be unable to exercise your right to vote. If you wish to regain your voting rights, you must settle the full amount of your outstanding payments prior to the meeting.

The meetings of co-owners are the opportunity to make your voice heard. Remember that you must comply with the decisions made during these meetings, whether you are present or not, and regardless of whether or not you are in agreement with these decisions.

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<sup>3</sup> Be careful, as certain work requires the approval of the syndicate of co-ownership.

## **Right to sit on the board of directors**

As a co-owner, you can submit your candidature as director of your co-ownership. For more information on the roles and responsibilities of the board members, please refer to the book *Administrateur de condo: Tout ce qu'il faut savoir* (Me Yves Papineau, Editions Wilson & Lafleur, 2017).

Although most major decisions are the purview of the general meeting, certain important decisions are made by the board of directors. Submitting your candidacy for the role of director will allow you to take part in these important decisions and thus ensure the sustainability of your co-ownership.

### **Note**

Do not forget that the presence of a board of directors is mandatory. It is the case for all syndicates of co-ownership, even small ones! If no one wishes to become a board member, the syndicate of co-owners may submit a request to the Court to appoint or replace one or more administrators and to fix the conditions of their charge. Generally, the designated person(s) will require payment.

## **Purchasing a condominium**

### **New construction**

#### **Role of the provisional administrator**

When a co-ownership is newly formed, the declaration of co-ownership usually provides for the appointment of a provisional administrator. This administrator exercises the functions of the board of directors until the general meeting of co-owners elects their first board of directors. Usually, the developer makes this designation. It is not uncommon that they designate themselves.

#### **Duties and obligations of the provisional administrator**

The provisional administrator has the same powers as any other director of a co-ownership. They are also subject to the same responsibilities.

They must at least:

- Register the syndicate with the *Registraire des entreprises du Québec* (within 60 days of the publication of the declaration of co-ownership at the *Registre foncier*);

- Enforce the declaration of co-ownership;
- Ensure the administrative and financial management of the co-ownership;
- Prepare the budget forecast for the co-ownership;
- Open a bank account in the name of the syndicate of co-ownership;
- Collect the condo fees and contributions to the contingency fund on behalf of the syndicate (and not on behalf of the developer);
- Subscribe the syndicate to an insurance policy covering the building (on behalf of the syndicate);
- Obtain an evaluation of the reconstruction value of the building;
- Subscribe the syndicate to a liability insurance (on behalf of the syndicate);
- Establish the agenda for the Special Transitional General Meeting (STGM);
- Submit to the syndicate of co-ownership the documents required by law (article 1106.1 CcQ) within 30 days following the special meeting (Special Transitional General Meeting).

### **The Special Transitional General Meeting (STGM)**

The provisional administrator is required to convene the Special Transitional General Meeting (STGM) within 90 days of the developer no longer holding a majority of the shares. At the start of the meeting, the co-owners must elect a board of directors.

According to article 1104 CcQ, if the transition meeting is not convened within the proper delay, any co-owner may convene it.

### **Accountability**

During the special meeting, the provisional administrator must report on their administration by presenting financial statements, which will be read by an accountant. The accountant can check for any irregularities.

This report allows the co-owners to:

- obtain detailed information on the financial situation of the syndicate;
- limit the risks of abuse on behalf of the developer with regards to the administration and management of the co-ownership.

### **The Guarantee Plan for New Residential Buildings**

This compulsory plan is administered by the *Garantie de construction résidentielle (GCR)* and covers co-ownership buildings comprising no more than four superimposed private portions (without taking into account parking spaces or storage). It does not cover buildings converted into divided co-ownerships (because these are not, strictly speaking, "new" residential buildings).

If you have purchased a building covered by this mandatory plan, you automatically benefit from its coverage. This cover provides you with down payment protection (up to a certain limit), as well as protection against construction defects.

The guarantees and coverage vary with regards to what occurs prior, during or after the acceptance of the building of the private or common portions.

### **Before the acceptance of the building:**

The compulsory plan offers partial refund of the payments you have made if the building has not been delivered or if the work has not been completed. These reimbursements are subject to maximum compensations. Relocation, moving and/or storage fees may also be covered.

### **During the acceptance of the building:**

During the acceptance of the building relating to the private portions (undertaken by each co-owner) or the common portions (undertaken by the syndicate of co-ownership), the compulsory plan covers apparent defects or poor workmanship. The completion of work in the common portions must be reported in writing by a building professional.

### **After the acceptance of the building:**

After the acceptance of the private portions (by each co-owner) or the common portions (by the syndicate of co-ownership), the compulsory plan covers faulty design, construction, or production, or the unfavourable nature of the ground for up to five years following the end of the work. It covers existing but non-apparent poor workmanship at the time of the acceptance for a period of one year (provided that they were reported within a reasonable amount of time). Latent defects are also covered for a period of three years after acceptance of the building (again provided that they are reported within a reasonable amount of time).

### **Note**

<p>The developer must provide you with a signed copy of the warranty contract belonging to your private portion. This contract must be dated, include the words "Approved by the Régie du bâtiment du Québec" and identify the RBQ's decision number.</p>
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For more information on warranty plans for new residential buildings, visit the GCR's website at <https://www.garantiegr.com/fr/> or the Régie du bâtiment du Québec at <https://www.garantie.gouv.qc.ca/en.html>.

### **Optional warranty plans**

This type of warranty applies to co-ownerships that have more than five superimposed units (without taking into account privately owned parking or storage) as well as buildings converted into co-ownerships. These optional plans are: [La Garantie Abrisat](#), [Garantie des immeubles résidentiels](#), [Qualité Habitation](#) and [Garantie Habitation des Maîtres Bâtitseurs](#). These guarantees are very different from the compulsory guarantee plan and vary from one administrator to another. It is particularly important that you carefully read the terms and conditions of application and implementation of the protections provided therein.

### **Protections offered by optional warranty plans**

Optional warranty plans generally ensure a portion of the down payments paid, the correction of apparent defects and the completion of work. Some protection is also offered for latent and construction defects.

### **Claim period**

Generally, the time limit for submitting a claim begins from the moment the declaration of co-ownership is published or when the building becomes inhabited. During its first year of existence, the syndicate is often under the provisional administrator's management. In order to avoid unpleasant surprises, you must be attentive to deadlines.

### **Legal recourse against construction and latent defects**

First of all, it is important to distinguish between a construction defect and a latent defect. A latent defect is a construction defect which has the effect of hindering the building. If it had been known by the buyer, the latter could have decided not to submit a purchase offer or could have adjusted the sales price. It is not apparent at the time of the sale, but it is present.

### **Note**

The syndicate of co-ownership is responsible for the maintenance and management of the building. With your permission, they can pursue legal action against the seller. Be careful, you must report the latent defect to the seller within a reasonable time. Thereafter, you will have three years to file an appeal.

A construction defect is a serious defect which affects the building. Often, this type of defect can hold the contractors, architect, engineer or subcontractor responsible for the construction liable. There are several recourses available. For more information, we recommend that you contact a lawyer.

### **What is a Contingency Fund Study?**

As stipulated in article 1071 of the CcQ, the syndicate of co-ownership has a legal obligation to set up a contingency fund, based on the estimated costs of major repairs, and the replacement of the common portions. Its goal is to accumulate the funds necessary to make these replacements or repairs and to have them ready once the time comes.

A contingency fund study makes it possible to determine the amount that should be calculated in the common expenses to ensure that the syndicate has the necessary funds.

The contingency fund study consists of two parts. Firstly, it is necessary to carry out the inventory of the building's components. This inventory must include the useful life of each component and the moment at which these will be reached. Secondly, there has to be an economic projection based on the replacement cost of these components in order to determine the contributions necessary to maintain the contingency fund sufficiently supplied.

### **Note**

With the modifications to the CcQ from Bill 16, the developer will be required to carry out a contingency fund study as well as a maintenance logbook. They must also submit plans and specifications relating to the syndicate of co-ownership, and the description of the private portions (reference unit). Other documents and obligations may be added at a later date by government regulation.

## **Insurance**

### **What should I insure?**

As the owner of a private unit, you also own a portion ("fraction") of the common areas. The amount you will have to pay for the syndicate's insurance coverage is calculated in function of your unit's relative value. This amount is included in your common expenses. You therefore contribute to this insurance by paying your "condo fees".

The syndicate of co-ownership's coverage must cover the costs for the entire building, that is, the private portions and the common portions. However, this insurance policy does not cover the improvements that you or previous co-owners have made to your private portion. You must insure these improvements yourself, as well as your personal belongings.

It is of good measure for a co-owner to procure a liability insurance (which certain declarations of co-ownership require). This protects them in the event that they may have to compensate financially for the damages suffered by third parties in moral, material or bodily injury that they may they have caused.

Note that following the adoption of the *Regulation respecting certain transitional measures for the carrying out of the Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions (Regulation)*, co-owners will be required by law to have liability insurance. This will come into force on October 15, 2020. However, if a co-owner already has a liability insurance policy in effect on October 15, 2020, this new requirement will only come into effect once their current coverage expires.

### **How do I determine the coverage for my liability insurance?**

The Regulation makes a distinction between co-owners residing in a building with fewer than thirteen fractions used as dwellings or for carrying out commercial activities (i.e.: commercial units), and the others. Please note that this calculation excludes the privately owned fractions that do not correspond to dwellings or commercial units (i.e.: parking or storage spaces). Each of the co-owners residing in a building with fewer than thirteen fractions (calculated according to the above criteria) must have a minimal liability insurance of one million dollars. If the building has thirteen fractions or more (calculated using the same criteria), their coverage must be of at least 2 million dollars.

If you rent your private portion to a tenant, the tenant should also acquire a personal property and liability insurance. The majority of declarations of co-ownership also contain a by-law to this effect.

## **Note**

The majority of declarations of co-ownership require that the co-owners subscribe to a civil liability insurance, a property insurance, and insurance for improvements made to their private portion.

There are also additional guarantees for insufficiency and/or absence of a syndicate insurance. This ensures that a co-owner's personal insurer reimburses them, in whole or in part, the sums they would have paid in the form of a special assessment.

## **Important Documents**

The syndicate of co-ownership has custody of several important documents, in particular those listing the by-laws of the immovable. These documents are part of the register of the co-ownership and must be made readily available to all co-owners.

### **Declaration of co-ownership**

The declaration of co-ownership is a notarized act that is published in the Land Register. Its primary objective is to subject an immovable to the regime of divided co-ownership. It highlights:

- The rules governing the operational and organizational structure of the co-ownership;
- The rights and obligations of the co-owners and the syndicate of co-owners.

It is divided into three sections: the Constitutive Act of Co-ownership ("first part"), the By-laws of the immovable ("second part") and the Description of the fractions ("third part"). This document is kept in the register of co-ownership, where each co-owner has the right to request a copy or access the document.

### **Initial declaration of co-ownership**

Also known as the "declaration of the horizontal syndicate," is a legal document that subjects an immovable to the divided co-ownership regime in accordance with the method of concomitant declarations of co-ownership (sometimes referred to as "co-ownership by phases"). The private portions generally consist of lots intended for the erection of buildings. Once the building is completed, each lot is subject to a concomitant declaration of co-ownership (sometimes called the "declaration of the vertical syndicate"). The common portions are made up of land and other equipment intended for the use of all co-owners in the project (for instance, outdoor parking lots or a swimming pool).



## **Concomitant declaration of co-ownership**

The concomitant declaration of co-ownership, is a declaration of co-ownership published on one of the private portions of the initial co-ownership. The co-ownership resulting from this declaration is legally independent from the other co-ownerships both in terms of management, and maintenance of its building(s). However, it is included in the initial co-ownership. This type of co-ownership can be found in vertical projects (residential towers) or horizontal projects (groups of townhouses).

## **By-laws of the immovable**

This is the second part of the declaration of co-ownership. The primary objective of this section is to highlight the rules governing the co-ownership. This is the section in which you find the regulations relating to the enjoyment, use and maintenance of the private and common portions. The by-laws also contain the rules relating to the operation and administration of the co-ownership as well as the procedures for allocating and collecting the common expenses.

## **Work in Co-ownerships**

### **What type of work can be done in a private portion without the authorization of the syndicate?**

As previously mentioned, you possess a right of enjoyment in your property. However, your neighbors also have this right in their properties. That is why certain work in co-ownerships cannot be done without obtaining the agreement of the syndicate or the board of directors. If in doubt, check your declaration of co-ownership.

Here are some examples of the types of work you can usually undertake in your private portion that do not require permission:

- New paint;
- Installation of wallpaper;
- Carpet installation<sup>4</sup>;
- Installation of a light fixture.

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<sup>4</sup> Be careful, if you want to modify your flooring, for example replacing carpeting by laminate floors, you must verify your declaration of co-ownership and submit your renovation projects to the board of directors. If done incorrectly, removing a carpet can modify the acoustics of the unit and result in noise issues.

## Note

Work carried out in the absence of authorization from the board of directors or the general meeting of co-owners may be sanctioned. The Court may order the destruction of the constructions and require that you restore the premises to their original state at your own expense.

### What types of work require authorization from the syndicate?

Most work projects must be submitted for approval to the board of directors. This allows them to ensure that the work will respect the declaration of co-ownership, the development and construction standards in force, will not infringe upon the rights of other co-owners, will not affect the common portions of the building, will be subject to the appropriate decision-making process, and will respect all decisions made by the general meeting of co-owners (when the latter has to authorize such work).

Your declaration of co-owners will indicate what you must provide in your request. Usually, you are required to submit a plan, the list of materials you will use and the list of contractors (and their contact information) that will participate in your projects.

Your work cannot be carried out in the common portions (this includes the common portions for restricted use) without the authorization of the general meeting of the co-owners.

Here is a non-exhaustive list of work projects for which you must obtain the general meeting's approval:

- When you encroach upon the common portions of the building (i.e. the construction of a shed);
- When you transform the common portions (i.e.: installing a terrace out back);
- When you wish to appropriate a section of the common portions (i.e.: work done in the attic)<sup>5</sup>;
- When you wish to enlarge a common area for restricted use (i.e.: enlarging a roof terrace);
- When your work affects the structural integrity of the building (i.e.: removing a load-bearing wall from your unit);
- When your work affects the common portions (i.e.: repainting the stairwell);

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<sup>5</sup> Remember that this also requires an amendment to the declaration of co-ownership, and possibly a modification of the cadastral plan and the relative value of your fraction.

- When your work affects the soundproofing of the building (i.e.: installing new flooring)<sup>6</sup>.

### **Syndicate's work in the private portions**

The syndicate may have to undertake some work in your private portions to ensure the building's maintenance. It is also possible for the syndicate to require passage through your unit to access a work area (for example, to access plumbing installations or balconies at a greater height). This right is subject to certain limitations. Firstly, the occupants of the private unit must be notified by the syndicate, ideally in writing, of the date of the work. The same is true for occupying tenants. The exception to this is for urgent work of an unpredictable nature (for example a broken pipe). In this case, the syndicate must have immediate access.

In order to prevent the delay of important work, article 1066 of the CcQ provides that no co-owner may interfere with the execution, even inside their private portion, of work required for the preservation of the building decided upon by the syndicate or urgent work. This obligation applies to co-owners as well as to occupants and tenants.

During an emergency, if no one is on site and the syndicate must enter your unit, it is preferable for them to have a duplicate of your key. That is the reason why the majority of declarations of co-ownership have a by-law which obliges co-owners to provide a duplicate of their key to the board of directors or the property manager. In the event that a co-owner does not provide a key to the syndicate, and the latter must force an entry, the co-owner may be held liable for the costs of repair.

Please note that if the syndicate must have access to your private portion at a time where it is being rented, the syndicate must submit the notices provided for in articles 1922 and 1931 of the CcQ to your tenants relating to improvements and the work being done (with the exclusion of emergency work).

## **Co-ownership Rentals**

### **Provincial regulations relating to the rental of co-ownerships in Quebec**

If you wish to rent your unit, you must first consult your declaration of co-ownership and the by-laws regarding the rental conditions in your building (i.e.: duration, type, etc.). You will also need to familiarize yourself with the following provisions:

- Before entering into a lease, the landlord must give to the tenant a copy of the by-laws of the immovable that contain the rules for the enjoyment, use and maintenance of the

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<sup>6</sup> Your declaration of co-ownership could say otherwise. If so, please follow the directions in your declaration of co-ownership.

dwellings and of the common portions. The by-laws form part of the lease (article 1894 of the CcQ);

- The by-laws of the immovable are binding on the tenant, or the occupant of a private unit, and may be set up against them as soon as a copy of the by-laws or the amendments made have been given by the co-owner or the syndicate (article 1057 of the CcQ);
- Any co-owner who rents their private portion must notify the syndicate and specify the name of the tenant, the terms of the lease, and the date on which the tenant received a copy of the by-laws (article 1065 of the CcQ);
- The syndicate must keep a register containing the name and mailing address of each co-owner that it keeps at the disposal of the co-owners. However, this register can also contain personal information concerning a co-owner or another occupant of the immovable if they expressly consent (article 1070 of the CcQ);
- After notifying the tenant and the co-owner, the syndicate may demand the termination of the lease of a private portion, where the non-performance of an obligation by the tenant causes serious injury to a co-owner or to another occupant of the building (article 1079 of the CcQ).

Remember, you must ensure that the use you make of your private portion is in accordance with the destination of the immovable and the by-laws of the building.

#### **Note**

The Ministry of Tourism has adopted a regulation that requires all co-owners who are renting their private portion on a short-term basis (example: Airbnb) to obtain written authorization from their syndicate of co-ownership.

### **By-laws of the immovable and renting your of co-ownership**

In general, you have the right to rent your private unit as long as the destination of the immovable is respected. On the other hand, the courts recognize that it is legitimate for the declaration of co-ownership to regulate this right. Several co-ownerships have adopted by-laws which prohibit short-term rentals and the transformation of a unit into a rooming house. However, to be valid, these restrictions must be justified by the destination of the immovable.

In all cases, co-owners who rent their private portions retain their rights and obligations. Therefore, they have the right to vote during the meetings and the obligation to pay their common expenses. They are also accountable for the actions and damages caused by their tenants.

**If in doubt, what should I do?**

If in doubt, consult an advisor or lawyer specializing in co-ownerships. These professionals can guide you in the interpretation of your declaration of co-ownership and your building's by-laws.

For more information on co-ownerships, we recommend the book *Condos: Everything you should know* (Benoît, Joli-Coeur and Papineau, 2008).