

# IBC UPDATE ON CO-OWNERSHIP INSURANCE

Changes to the *Civil Code of Québec* (C.C.Q.) were made by the assent of Bill 141 and came into force on December 13, 2018. Many of those concerned co-ownership. Let us take a closer look at their impacts in the world of insurance.

## IMPACTS OF LEGISLATIVE AMENDMENTS

Before addressing the changes made to the insurance forms, it is useful to consider the changes made to the C.C.Q. They especially include:

Syndicate's insufficiency of insurance and absence of insurance and its deductible are now considered as common expenses.

These common expenses must be distributed among all the co-owners, even those who have no damage in their unit.

The syndicate retains its right of recourse against an at-fault co-owner for the insufficiency or absence of insurance and for its deductible.

Improvements in co-owners' units will be determined based on the description of the private portions established by the syndicate<sup>1</sup>.

## AMENDMENTS TO CO-OWNER'S INSURANCE CONTRACTS

As a result of the changes, IBC had to modify the insurance contracts it suggests for co-owners. Indeed, the syndicate's deductible and the insufficiencies of insurance are now clearly considered as common expenses. These expenses must be distributed

between all co-owners<sup>2</sup>. The amendments to the IBC contracts ensure that the co-owners are covered when there is an apportionment of insufficiency or absence of syndicate's insurance even if their unit is not damaged.

### APPORTIONMENT

The apportionment is the amount charged by the syndicate to all co-owners, based on their share, to offset losses suffered as the result of damage to property in which the syndicate has an insurable interest.

Thus, the new *Extension of Coverage - Loss Assessment* covers the apportionment that the co-owner will receive from his syndicate in the event of insufficiency or absence of insurance of the syndicate's policy up to the limit indicated in the contract. If a co-owner has caused damages by his fault, the syndicate may claim the amount of uncovered damages including its deductible. It should be noted that the contracts have also been modified so that the damages caused by a co-owner through his fault to the private portions of his unit will also be payable in civil liability.

<sup>1</sup>Article 1070 C.C.Q.

<sup>2</sup>Article 1074.2 C.C.Q.

# 1

## WHAT IF THE DAMAGE IS NOT COVERED BY THE SYNDICATE'S POLICY?

The syndicate is still responsible for the preservation<sup>3</sup> of the building. Even if it does not have the insurance required during a disaster, it must take care of the repair. It can either use its self-insurance fund or distribute the amount of the damages between all the co-owners.

If the risk is covered by the contract of the co-owner, his insurer will indemnify 90% of the apportionment. The missing 10% will act as a lever for prevention and will be the responsibility of the co-owner, just like his own deductible.

# 2

## WHAT IF THE AMOUNT OF DAMAGE IS LESS THAN THE AMOUNT OF THE SYNDICATE'S DEDUCTIBLE?

The syndicate must also take care of the repair. Again, it can either use its self-insurance fund or distribute the damage amount among all the co-owners. Since the portion of the syndicate's deductible is no longer covered by the insurance contracts proposed by IBC, this apportionment will be the responsibility of the co-owners.

### GOOD TO REMEMBER!



- Co-owners are advised to insure themselves against all risks to which they may be exposed when an apportionment by the occurs. For example, the co-owners of the upper floors are exposed to an apportionment after a sewer backup, they must have this protection for their insurer to compensate them for this apportionment.
- The syndicate can only recover its deductible from the co-owners by their contribution for common expenses, subject to its right to sue the at-fault co-owner. It is the same thing in the cases of syndicate's absence or insufficiency of insurance.
- IBC has developed a **web tool** that helps to understand the different situations that can occur during a condominium claims settlement. The tool can be consulted at [co-ownership.bac-quebec.qc.ca](http://co-ownership.bac-quebec.qc.ca)

# 3

## AND IF THE INSURANCE AMOUNT OF THE SYNDICATE'S POLICY IS INSUFFICIENT?

If the risk is covered on the contract of the co-owner, his insurer will indemnify him for the amount of the apportionment minus the portion of the syndicate's deductible that will be his responsibility, just like his own deductible.

# 4

## DOES THE SYNDICATE HAVE THE RIGHT NOT TO CLAIM TO ITS INSURER?

Yes, the syndicate has the choice to claim or not to its insurer. If it decides not to claim for damage that is covered by its contract, it can use its self-insurance fund. It may also distribute between the co-owners the total amount of damage. The insurer of the co-owner will indemnify the portion of insufficiency of insurance (see point 3).

# 5

## IS IT DIFFERENT IF A CO-OWNER IS AT-FAULT?

Whether the syndicate decides to claim or not to his insurer, it can sue the at-fault co-owner only for damages not covered by its contract. This usually represents the portion of the syndicate's absence or insufficiency of insurance and its deductible. The insurer of the at-fault co-owner will indemnify him in civil liability.

In cases where a third party who is not part of the co-ownership is responsible, the syndicate can always claim him the full amount of damages.

<sup>3</sup>Article 1039 C.C.Q.