

# CO-OWNERSHIP : NEW LEGISLATION

**THE QUEBEC GOVERNMENT ADOPTED NEW PROVISIONS ON CO-OWNERSHIP INSURANCE IN THE SPRING OF 2020. HERE ARE SOME KEY ELEMENTS.**

## CO-OWNERSHIP — BILL 41 RECEIVES ASSENT

**On March 17, the Quebec National Assembly assented to Bill 41<sup>1</sup>. Some sections of this law make amendments to the Civil Code of Quebec (CCQ) that specifically concern co-ownership insurance.**

### CIVIL CODE AMENDMENTS

Three articles of the CCQ concerning divided co-ownership are affected by the enactment of this law:

#### ARTICLE 1073

The third paragraph of this article as amended by Bill 141 in December 2018 **is again amended by replacing** “The Government may prescribe, by regulation, the criteria according to which a deductible is considered unreasonable.” **with** “The Government may, by regulation, determine cases in which a deductible is considered unreasonable.” The new article 1073, including this modification, will come into force at the same time as the by-law on co-ownership which is still awaited.

This amendment has no immediate impact in insurance since there are no provisions pertaining to such cases. However, it can be expected that a subsequent regulation will be more specific about determining an “unreasonable” deductible since the regulation will indicate cases rather than criteria.

#### ARTICLE 1074.2

The following **wording has been added** to the end of the first paragraph: “[...] and, in the cases provided for in this Code, for the injury caused by the act, omission or fault of another person or by the act of things in the co-owner’s custody.” With this amendment, the burden of proof is reversed in certain situations.

For example, in a case where the syndicate takes legal action against a co-owner for damage caused by property in the co-owner’s custody, it is up to the co-owner to demonstrate that s/he did not commit any fault in order to be absolved of responsibility.

#### ARTICLE 1097

A **fifth point has been added** to indicate the conditions for modifying the description of the private portions referred to in article 1070. It represents a directive regarding management of the description of the private portions that clearly determines the description to be used in a claim settlement.

<sup>1</sup> An Act respecting mainly the implementation of certain provisions of the Budget Speeches of 17 March 2016, 28 March 2017, 27 March 2018 and 21 March 2019

# CO-OWNERSHIP — NEW REGULATION

On April 15, 2020, the Regulation establishing various measures for the insurance of divided co-ownerships (Regulation) was published in the Gazette officielle du Québec. Some articles of this Regulation are completing the Bill 141<sup>2</sup> assented to in December 2018 by providing details to the articles of the Civil Code of Quebec (CcQ) which are concerned.

The Regulation's Sections will come into force at different dates as indicated below.

## SECTION 1

### LIABILITY FOR CO-OWNERS

As of **October 15, 2020**, the minimum amount of liability insurance that must be taken out by each of the co-owners of a building in divided co-ownership is:

- \$ 1 million if the building contains less than 13 units (residential or commercial);
- \$ 2 million if the building has 13 or more units.

If the Co-Owner's insurance policy is already in force on October 15, 2020, s/he may wait for her/his next renewal before complying with this provision but after October 15, 2021, Section 1 will be applicable in all cases.

## SECTION 2

### SELF INSURANCE FUND'S CONTRIBUTION

As of **April 15, 2022**, the minimum contribution of the Co-Owners to the self insurance fund is established annually when the syndicate determines the amounts to be paid into the contingency fund. The Regulation stipulate how the fund should be capitalized, depending on whether it is less than or more than half of the highest deductible provided by the insurance policy taken out by the syndicate.

When determining the amount of the self insurance fund, the deductible applicable to damage caused by an earthquake or a flood is not taken into account if these protections are provided for in the syndicate's insurance contract.

## SECTION 3

### APPRAISAL OF THE AMOUNT OF INSURANCE

As of **April 15, 2021**, only a member of the Ordre of Chartered appraisers of Québec may be responsible for assessing the amount that the insurance purchased by the co-ownership syndicate must provide in order to provide for the reconstruction of the immovable held in divided co-ownership. Article 1073 CcQ stipulates that this amount must be evaluated at least every five years.

## SECTION 4

### RISKS COVERED BY OPERATION OF LAW

As of **April 15, 2021**, the risks that will be covered by operation of law as provided for at article 1073 CcQ 3rd paragraph are as follows: theft, fire, lightning, storm, hail, explosion, leaks and overflows from sanitary facilities and devices connected to water distribution pipes inside the building, strike, riot or popular movement, the impact of an aircraft or vehicle and acts of vandalism or malicious acts.

IBC reminds its members that the policy or an endorsement may expressly and in clearly legible characters indicate which of these risks are excluded. Section 4 does not apply until the expiration of the period of coverage for this insurance, but after April 15, 2022, section 4 will apply in all cases. Revision of the tools IBC offers its members several tools related to co-ownership. They will be revised as quickly as possible to reflect the changes made by this new regulation if necessary.

<sup>2</sup> Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions

## IBC CO-OWNERSHIP INSURANCE TOOLS